

# OFFICIAL CODE OF GEORGIA ANNOTATED

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## 2013 Supplement

Including Acts of the 2013 Regular Session of the General Assembly

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*Prepared by*

The Code Revision Commission

The Office of Legislative Counsel

*and*

The Editorial Staff of LexisNexis®



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## Volume 3 2000 Edition

Title 1. General Provisions

Title 2. Agriculture

Title 3. Alcoholic Beverages

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Including Annotations to the Georgia Reports  
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## **THIS SUPPLEMENT CONTAINS**

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2013 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 29, 2013. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 29, 2013.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2013 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2013 supplement pamphlets and in the bound volumes of the Code.

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# TITLE 1

## GENERAL PROVISIONS

Chap.

2. Persons and Their Rights, 1-2-1 through 1-2-11.
3. Laws and Statutes, 1-3-1 through 1-3-11.
4. Holidays and Observances, 1-4-1 through 1-4-20.

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## CHAPTER 1

### GENERAL PROVISIONS

#### 1-1-1. Enactment of Code.

**Editor's notes.** — For the Acts reenacting the Official Code of Georgia Annotated as amended by the text and numbering contained in the 2000 through 2012 supplements, see Ga. L. 2001, p. 4, § 54; Ga. L. 2002, p. 415, § 54; Ga. L. 2003, p. 140, § 54; Ga. L. 2004, p. 631, § 54; Ga. L. 2005, p. 60, § 54; Ga. L. 2006, p. 72, § 54; Ga. L. 2007, p. 47, § 54; Ga. L. 2008, p. 324, § 54;

Ga. L. 2009, p. 8, § 54; Ga. L. 2010, p. 878, § 54; Ga. L. 2011, p. 752, § 54; Ga. L. 2012, p. 775, § 54, and Ga. L. 2013, p. 141, § 54, respectively.

**Law reviews.** — For discussion of the work of the Code Revision Commission in making the Code, see 18 Ga. St. B.J. 102 (1982).

#### 1-1-2. Legislative intent.

### JUDICIAL DECISIONS

**Cited** in *Sheriff v. State*, 277 Ga. 182, 587 S.E.2d 27 (2003); *Hardin v. NBC Uni-*

*versal, Inc.*, 283 Ga. 477, 660 S.E.2d 374 (2008).

#### 1-1-7. Notes and catchlines of Code sections not part of law.

### JUDICIAL DECISIONS

**Cited** in *South v. Bank of Am.*, 250 Ga. App. 747, 551 S.E.2d 55 (2001).

#### 1-1-10. Specific repealer; provisions saved from repeal.

### JUDICIAL DECISIONS

**Cited** in *Denhardt v. 7 Bay Traders LLC*, 296 Ga. App. 122, 673 S.E.2d 621 (2009).

## CHAPTER 2

### PERSONS AND THEIR RIGHTS

Sec.

1-2-8. (For effective date, see note.)

Rights of minors.

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**Law reviews.** — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

#### 1-2-1. Classes of persons generally; corporations deemed artificial persons; nature of corporations generally.

**Law reviews.** — For survey article discussing developments in law of business associations for the period from June

1, 1999 through May 31, 2000, see 52 Mercer L. Rev. 95 (2000).

#### 1-2-6. Rights of citizens generally.

### JUDICIAL DECISIONS

#### ANALYSIS

#### GENERAL CONSIDERATION

##### General Consideration

**Mentally and physically disabled person found competent.** — Though a victim of sexual assault was mentally and physically disabled, a trial court did not abuse its discretion in determining that the victim was competent to testify against defendant at defendant's criminal trial because the trial court held a competency hearing and found that the victim

understood the victim's responsibility to tell the truth and clearly knew what had happened, who had done it, and so communicated those facts, despite the victim's mental and physical disabilities. *Wilson v. State*, 270 Ga. App. 311, 605 S.E.2d 921 (2004).

**Cited in** *Handel v. Powell*, 284 Ga. 550, 670 S.E.2d 62 (2008); *Spillers v. State*, 299 Ga. App. 854, 683 S.E.2d 903 (2009).

#### 1-2-8. (For effective date, see note.) Rights of minors.

The law prescribes certain ages at which persons shall be considered of sufficient maturity to discharge certain civil functions, to make contracts, and to dispose of property. Prior to those ages they are minors and are, on account of that disability, unable to exercise these rights as citizens unless such minor becomes emancipated by operation of law or pursuant to Article 10 of Chapter 11 of Title 15. (Orig. Code 1863, § 1588; Code 1868, § 1651; Code 1873, § 1657; Code 1882, § 1657; Civil Code 1895, § 1811; Civil Code 1910, § 2168; Code 1933, § 79-208; Ga. L. 2006, p. 141, § 2/HB 847; Ga. L. 2013, p. 294, § 4-1/HB 242.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2014. For version of this Code section in effect until January 1, 2014, see the 2013 amendment note.

**The 2006 amendment,** effective July 1, 2006, added “unless such minor becomes emancipated by operation of law or pursuant to Article 6 of Chapter 11 of Title 15” at the end of the last sentence.

**The 2013 amendment,** effective January 1, 2014, substituted “Article 10” for “Article 6” in the last sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2013; p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: “This Act shall become effective on January 1, 2014, and

shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions.”

**Law reviews.** — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 79 (2006).

**1-2-9. Rights of citizens of the United States while in this state generally.**

JUDICIAL DECISIONS

**Cited in** Kennedy v. Ga. Dep’t of Human Res. Child Support Enforcement, 286 Ga. App. 222, 648 S.E.2d 727 (2007).

**1-2-10. Rights of citizens of other states or nations to sue or give evidence.**

**Law reviews.** — For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

JUDICIAL DECISIONS

**O.C.G.A. § 1-2-10 applies to citizens of foreign countries** who are residing within the United States but does not extend to nonresident aliens. AT&T Corp. v. Sigala, 274 Ga. 137, 549 S.E.2d 373 (2001).

O.C.G.A. §§ 1-2-10 and 1-2-11, regard-

ing the rights of citizens of other nations to sue in Georgia, apply to citizens of foreign countries who are residing within the United States and do not extend to nonresident aliens. Gonzalez v. DOT, 279 Ga. 230, 610 S.E.2d 527 (2005).

**1-2-11. Rights of aliens generally; purchase, holding, and conveyance of realty.**

JUDICIAL DECISIONS

**O.C.G.A. § 1-2-11 applies to citizens of foreign countries** who are residing within the United States but does not

extend to nonresident aliens. AT&T Corp. v. Sigala, 274 Ga. 137, 549 S.E.2d 373 (2001).

O.C.G.A. §§ 1-2-10 and 1-2-11, regarding the rights of citizens of other nations to sue in Georgia, apply to citizens of foreign countries who are residing within the United States and do not extend to nonresident aliens; a decision adopting

the doctrine of forum non conveniens was not decided on the basis of those statutes or the rights and privileges they concern. *Gonzalez v. DOT*, 279 Ga. 230, 610 S.E.2d 527 (2005).

CHAPTER 3

LAWS AND STATUTES

Sec.		Sec.	
1-3-1.	Construction of statutes generally.	1-3-4.1.	Effective date for general Acts requiring increases in compensation of certain county officials.
1-3-3.	Definitions.		
1-3-4.	Effective date of legislative Acts.		

1-3-1. Construction of statutes generally.

(a) In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy. Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands.

(b) In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

(c) A substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law.

(d) In addition to the rules for construction prescribed in subsections (a) through (c) of this Code section, the rules provided in this subsection shall govern the construction of all statutes with respect to the subjects enumerated.

(1) **Bonds.** When a bond is required by law, an undertaking in writing, without seal, is sufficient; and in all bonds where the names of the obligors do not appear in the bond but are subscribed thereto, they are bound thereby.

(2) **Census.** Whenever there is used in the statutory law of this state the term “federal census,” “United States census,” “decennial



census,” or similar words referring to the official census conducted every ten years by the United States of America or any agency thereof as required by Article I, Section II, Paragraph III of the Constitution of the United States, the effective date of such census for the purpose of making operative and of force any statutory law of this state shall be determined as follows:

(A) The effective date of the census shall be July 1 of the first year after the year in which the census is conducted, for the purpose of making operative and of force the following laws:

- (i) Code Section 15-16-20;
- (ii) Code Sections 15-6-88 through 15-6-91;
- (iii) Code Section 48-5-183;
- (iv) Code Sections 15-9-63 through 15-9-67;
- (v) Code Section 36-5-25;
- (vi) Code Section 15-10-23; and
- (vii) Code Section 45-16-11;

provided, however, that if a county’s population decreases according to a more recent census below its population according to an earlier census, then, notwithstanding any other provision of law, any officer who is compensated under a law specified in this subparagraph and who is in office on the date specified in this subparagraph shall continue during his entire tenure in such office (including any future terms of office in such office) to be compensated on the basis of the county’s population according to such earlier census;

(B) For purposes of any program of grants of state funds to local governments, the effective date of the census shall be July 1 of the first year after the year in which the census is conducted;

(C) For the purpose of reconstituting the membership of any constitutional or statutory board, commission, or body whose members are appointed from congressional districts, the effective date of the census shall be January 1 of the third year after the year in which the census is conducted;

(D) The effective date of the census shall be July 1 of the second year after the year in which the census is conducted for the purpose of making operative and of force all other statutory laws which do not expressly provide otherwise.

(3) **Computation of time.** Except as otherwise provided by time period computations specifically applying to other laws, when a

period of time measured in days, weeks, months, years, or other measurements of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and, if the last day falls on Saturday or Sunday, the party having such privilege or duty shall have through the following Monday to exercise the privilege or to discharge the duty. When the last day prescribed for such action falls on a public and legal holiday as set forth in Code Section 1-4-1, the party having the privilege or duty shall have through the next business day to exercise the privilege or to discharge the duty. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(4) **Gender.** The masculine gender includes the feminine and the neuter.

(5) **Joint authority.** A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.

(6) **Number.** The singular or plural number each includes the other, unless the other is expressly excluded.

(7) **Tense.** The present or past tense includes the future. (Orig. Code 1863, § 5; Code 1868, § 4; Code 1873, § 4; Code 1882, § 4; Civil Code 1895, § 4; Penal Code 1895, § 1; Civil Code 1910, § 4; Penal Code 1910, § 1; Code 1933, § 102-102; Ga. L. 1958, p. 388, § 1; Ga. L. 1963, p. 608, § 1; Ga. L. 1967, p. 579, § 1; Ga. L. 1981, p. 951, § 1; Ga. L. 1985, p. 648, § 1; Ga. L. 1990, p. 1903, § 1; Ga. L. 2001, p. 902, § 22; Ga. L. 2012, p. 173, § 2-1/HB 665.)

**The 2001 amendment,** effective July 1, 2001, deleted “and” at the end of division (d)(2)(A)(iv) and added divisions (d)(2)(A)(vi) and (d)(2)(A)(vii).

**The 2012 amendment,** effective July 1, 2012, substituted “through 15-6-91” for “through 15-6-92” at the end of division (d)(2)(A)(ii).

**Law reviews.** — For article on commercial law, see 53 Mercer L. Rev. 153

(2001). For article on construction law, see 53 Mercer L. Rev. 173 (2001). For article on trial practice and procedure, see 53 Mercer L. Rev. 475 (2001). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010). For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012).

## JUDICIAL DECISIONS

### ANALYSIS

GENERAL CONSIDERATION

APPLICABILITY

GENERAL RULES OF CONSTRUCTION

LEGISLATIVE INTENT

WORDS' SIGNIFICATION



SUBSTANTIAL STATUTORY COMPLIANCE  
COMPUTATION OF TIME  
ILLUSTRATIVE CASES

### General Consideration

**Rape shield statute.** — By the statute's plain terms the rape shield statute, O.C.G.A. § 24-2-3(a) (see now O.C.G.A. § 24-4-412), applied only in prosecutions for rape and not to child molestation cases; however, the trial court did not err by applying former O.C.G.A. § 24-2-3(a) to defendant's case because the defendant was prosecuted for, among other offenses, rape, and the fact that the defendant was acquitted of the rape charge did not require a new trial on the other charges. *Abdulkadir v. State*, 279 Ga. 122, 610 S.E.2d 50 (2005).

**Construction cannot render statute meaningless.** — Because the purpose of O.C.G.A. § 17-6-72(d)(1) was remedial and had to therefore be construed in favor of the surety, in interpreting the statute and avoiding a meaningless result the trial court properly allowed a surety a remission of 50 percent of the bond amount after the surety filed its application for the bond at any time within 30 days following the expiration of the two-year period following the date of judgment. *State of Ga. v. Free At Last Bail Bonds*, 285 Ga. App. 734, 647 S.E.2d 402 (2007).

Defendant was not required to register as a sexual offender because the defendant successfully completed a first-offender sentence for statutory rape and burglary charges, and a "conviction" under O.C.G.A. § 42-1-12(a)(8) did not include a discharge without an adjudication of guilt following the successful completion of a first offender sentence; the plain language of O.C.G.A. § 42-8-62(a) provided that, with certain exceptions, once a first offender was discharged without an adjudication of guilt, he or she stood completely exonerated and was not considered as having been convicted of a crime. The trial court's interpretation of the statutes at issue as requiring all first offenders who had committed certain sexual offenses to register as sexual offenders for the rest of their lives rendered the

plain language of O.C.G.A. § 42-1-12(8) meaningless and was improper. *Jackson v. State*, 299 Ga. App. 356, 683 S.E.2d 60 (2009).

**Dougherty County Probate Court allowed to hold jury trials.** — Dougherty County, Ga., Probate Court had jurisdiction to hold jury trials because: (1) the 2010 census, which dropped the county's population below that required by O.C.G.A. § 15-9-120(2) to allow jury trials in probate court, was not effective until July 1, 2012, under O.C.G.A. § 1-3-1(d)(2)(D); and, (2) a statutory amendment, effective on that date, decreased the population requirement. *Ellis v. Johnson*, 291 Ga. 127, 728 S.E.2d 200 (2012).

**Cited in** *S & A Indus., Inc. v. Bank Atlanta*, 247 Ga. App. 377, 543 S.E.2d 743 (2000); *Gullatt v. Omega Psi Phi Fraternity, Inc.*, 248 Ga. App. 779, 546 S.E.2d 927 (2001); *McKenzie v. State*, 250 Ga. App. 277, 549 S.E.2d 774 (2001); *Cox v. Barber*, 275 Ga. 415, 568 S.E.2d 478 (2002); *In re T.H.*, 258 Ga. App. 416, 574 S.E.2d 461 (2002); *Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys.*, 262 Ga. App. 879, 586 S.E.2d 762 (2003); *Waters v. Stewart*, 263 Ga. App. 195, 587 S.E.2d 307 (2003); *Dep't of Human Res. v. Nation*, 265 Ga. App. 434, 594 S.E.2d 383 (2004); *Johnson v. Ga. Dep't of Human Res.*, 278 Ga. 714, 606 S.E.2d 270 (2004); *Cochran v. Bowers*, 274 Ga. App. 449, 617 S.E.2d 563 (2005); *In the Interest of K.M.C.*, 273 Ga. App. 276, 614 S.E.2d 896 (2005); *Effingham County Bd. of Tax Assessors v. Samwilka, Inc.*, 278 Ga. App. 521, 629 S.E.2d 501 (2006); *Summerlin v. Ga. Pines Cmty. Serv. Bd.*, 278 Ga. App. 831, 630 S.E.2d 115 (2006); *In the Interest of L.J.*, 279 Ga. App. 237, 630 S.E.2d 771 (2006); *Goswick v. Murray County Bd. of Educ.*, 281 Ga. App. 442, 636 S.E.2d 133 (2006); *Echols v. Echols*, 281 Ga. 546, 640 S.E.2d 257 (2007); *Merry v. Williams*, 281 Ga. 571, 642 S.E.2d 46 (2007); *In the Interest of D.B.*, 284 Ga. App. 445, 644 S.E.2d 305 (2007); *DBL, Inc. v. Carson*, 284 Ga. App.

898, 645 S.E.2d 56 (2007); *Leake v. Murphy*, 284 Ga. App. 490, 644 S.E.2d 328 (2007); *Ga. Public Defender Stds. Council v. State of Ga.*, 284 Ga. App. 660, 644 S.E.2d 510 (2007); *In re Carter*, 288 Ga. App. 276, 653 S.E.2d 860 (2007); *Charles H. Wesley Educ. Found., Inc. v. State Election Bd.*, 282 Ga. 707, 654 S.E.2d 127 (2007); *In re Estate of Miraglia*, 290 Ga. App. 28, 658 S.E.2d 777 (2008); *Carolina Tobacco Co. v. Baker*, 295 Ga. App. 115, 670 S.E.2d 811 (2008); *In the Interest of P.S.*, 295 Ga. App. 724, 673 S.E.2d 74 (2009); *Morrell v. State*, 297 Ga. App. 592, 677 S.E.2d 771 (2009); *Moore v. Moore-McKinney*, 297 Ga. App. 703, 678 S.E.2d 152 (2009); *Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC*, 298 Ga. App. 286, 680 S.E.2d 143 (2009); *Frix v. State*, 298 Ga. App. 538, 680 S.E.2d 582 (2009); *Peck v. State*, 300 Ga. App. 375, 685 S.E.2d 367 (2009); *Emory Adventist, Inc. v. Hunter*, 301 Ga. App. 215, 687 S.E.2d 267 (2009); *Northeast Atlanta Bonding Co. v. State*, 308 Ga. App. 573, 707 S.E.2d 921 (2011); *Hill v. State*, 309 Ga. App. 531, 710 S.E.2d 667 (2011); *Davenport v. State*, 289 Ga. 399, 711 S.E.2d 699 (2011); *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011); *Luangkhot v. State*, 313 Ga. App. 599, 722 S.E.2d 193 (2012); *Brown v. State*, 314 Ga. App. 1, 723 S.E.2d 112 (2012); *Walker v. State*, 290 Ga. 696, 723 S.E.2d 894 (2012); *Boyd v. State*, 314 Ga. App. 883, 726 S.E.2d 135 (2012); *Mayor & Aldermen of Savannah v. Batson-Cook Co.*, 291 Ga. 114, 728 S.E.2d 189 (2012); *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012); *Nicholson Hills Dev. v. Branch Banking & Trust Co.*, 316 Ga. App. 857, 730 S.E.2d 572 (2012); *Inagawa v. Fayette County*, 291 Ga. 715, 732 S.E.2d 421 (2012); *Gay v. Owens*, 292 Ga. 480, 738 S.E.2d 614 (2013); *Norred v. Teaver*, No. A12A2413, 2013 Ga. App. LEXIS 225 (Mar. 19, 2013).

### Applicability

**Computation of time.** — Superior court improperly dismissed as untimely appellant city's petition for a writ of certiorari challenging a civil service board's decision, as the petition was timely filed

for purposes of O.C.G.A. § 5-4-6(a) since: (1) the last day to file the petition fell on Thanksgiving Day; (2) the Friday after Thanksgiving day, like Thanksgiving day, was a legal holiday as set forth in O.C.G.A. § 1-4-1; and (3) the petition was filed on the very next business day, as allowed by O.C.G.A. § 1-3-1(d)(3). *City of Atlanta v. Hector*, 256 Ga. App. 665, 569 S.E.2d 600 (2002).

Denial of an untimely motion for a continuance was not an abuse of discretion, in the absence of a proffer of defendant's counsel's testimony or other evidence to support this claim. *Currington v. State*, 270 Ga. App. 381, 606 S.E.2d 619 (2004).

**Construction of "holidays."** — Because the plain language of O.C.G.A. § 5-6-38(a) and O.C.G.A. § 1-3-1(a) make no provisions for extending the filing time for notices of appeal to compensate for county declared holidays and O.C.G.A. § 1-4-2 limits religious holidays to Sundays, Good Friday did not constitute a holiday for purposes of extending the filing date. *In re Estate of Dasher*, 259 Ga. App. 201, 575 S.E.2d 921 (2002).

**Definition according to experts in medical field.** — Where executive agencies have rule-making powers delegated by the Georgia General Assembly, O.C.G.A. § 1-3-1(b) must yield to other rules of statutory construction; thus, the definition of "specialty" as understood by an American board on medical specialties was not controlling for purposes of the single-specialty exemption of O.C.G.A. § 31-6-2(14)(G)(iii) regarding the requirement of obtaining a certificate of need. *Albany Surgical, P.C. v. Dep't of Cmty. Health*, 257 Ga. App. 636, 572 S.E.2d 638 (2002).

### General Rules of Construction

**Specific sentencing provisions controlled over general sentencing provisions.** — Pursuant to O.C.G.A. § 16-13-31(g)(1), the trial court lacked the authority to probate or suspend sentences imposed against two defendants in unrelated criminal actions, and neither the 2004 nor the 2006 amendments to the general sentencing provisions under O.C.G.A. § 17-10-1(a)(1) were relevant; moreover, because O.C.G.A. §§ 17-10-6.1



and 17-10-6.2 were statutes that defined certain categories of crimes and provided the sentencing guidelines for those categories, it did not appear that the list of these two exceptions normally would have included § 16-13-31 or any other specific criminal statute, and any omission would be significant only with regard to a statute that defined classes or categories of crimes. *Gillen v. State*, 286 Ga. App. 616, 649 S.E.2d 832 (2007), cert. denied, 2007 Ga. LEXIS 809 (Ga. 2007).

**Statutes construed in connection and in harmony with existing law.**

When O.C.G.A. §§ 15-11-40(b), 15-11-63(e)(1)(D) and (e)(2)(c) were read together to effectuate their meaning, as required by O.C.G.A. § 1-3-1(a), the juvenile court did not err in denying a juvenile's motion to commute or reduce the sentence imposed, as allegations that the juvenile was rehabilitated while in restrictive custody and would benefit from being released were insufficient to grant the juvenile court authority to modify its commitment order once physical custody of the juvenile was transferred to the Department of Juvenile Justice. In the *Interest of J.V.*, 282 Ga. App. 319, 638 S.E.2d 757 (2006).

**Construction cannot render statute meaningless.** — Construing O.C.G.A. § 16-10-94(c), and in order to avoid rendering the terms “and involving another person” meaningless, the court had to interpret that language as imposing felony punishment when the person committed the tampering offense involving the prosecution or defense of a third person; hence, because the state did not present any allegations or evidence indicating that the defendant committed the tampering offense to prevent the apprehension or prosecution of anyone other than himself, the felony sentence imposed was void, and had to be vacated. *English v. State*, 282 Ga. App. 552, 639 S.E.2d 551 (2006).

**Certain express requirements must be spelled out in statute.** — A county historic preservation commission's decision was not void because the commission did not have seven members as required by an ordinance. Neither the ordinance nor the Historical Preservation Act, O.C.G.A. § 44-10-20 et seq., provided that

failure to have seven active members invalidated a decision; such an express requirement was necessary under O.C.G.A. § 1-3-1(c). *DeKalb County v. Buckler*, 288 Ga. App. 346, 654 S.E.2d 193 (2007), cert. denied, 2008 Ga. LEXIS 374 (Ga. 2008).

**Gender references.** — For construction purposes, the state's act of merely tracking the language of O.C.G.A. § 16-10-24(a), which itself used the masculine pronoun “his” to include the feminine gender, did not result in a fatal variance between the evidence at trial and the allegations of the accusation, in a case involving a female officer, entitling both defendants to a directed verdict on the charges of which they were eventually convicted. *Curtis v. State*, 285 Ga. App. 298, 645 S.E.2d 705 (2007).

**Plain and ordinary meaning.** — It is a fundamental principle of statutory construction that the court must give words their plain and ordinary meaning, pursuant to O.C.G.A. § 1-3-1(b); therefore, because O.C.G.A. § 9-12-61 recites explicitly that revival of a dormant judgment may be accomplished by “an action” within three years of when the judgment became dormant, not by “a judgment” within that time period, the General Assembly intended that dormant judgments could be revived during a three year period thereafter by bringing an action into existence, i.e., filing an action. *Magnum Communs. Ltd. v. Samoluk*, 275 Ga. App. 177, 620 S.E.2d 439 (2005).

In an action in which the plaintiff consumer filed a complaint under the Georgia Fair Business Practices Act (FBPA), O.C.G.A. § 10-1-390 et seq., and the Georgia Unfair or Deceptive Practices Toward the Elderly Act, O.C.G.A. § 10-1-850 et seq., and the lender argued for dismissal because the language of O.C.G.A. § 10-1-851 required conduct directed at more than one elderly person, the argument was rejected; consistent with O.C.G.A. § 1-3-1(d)(6), and the use of plurals or the singular form in O.C.G.A. §§ 10-1-850, 10-1-852, and 10-1-853, O.C.G.A. § 10-1-851 required only a showing that FBPA was violated against one elderly person. *Kitchen v. Ameriquest Mortg. Co.*, No. 1:04-CV-2750-BBM, 2005 U.S. Dist. LEXIS 43937 (N.D. Ga. Apr. 29, 2005).

Trial court properly reversed a decision by the Georgia Workers' Compensation Appellate Division and reinstated a decision of an administrative law judge who found that an employee suffered a "catastrophic injury" for purposes of O.C.G.A. § 34-9-200.1(g)(6), as the employee was unable to perform the prior work done, although the employee was able to perform other work available in substantial numbers within the national economy; the relevant provision of O.C.G.A. § 34-9-200.1(g)(6) used "or" between the two types of work that an employee could perform rather than "and" and that phraseology was deemed unambiguous, plain, and capable of having only one meaning, based on statutory interpretation rules under O.C.G.A. § 1-3-1(a) and legislative changes over time to O.C.G.A. § 34-9-200.1(g)(6). *Rite-Aid Corp. v. Davis*, 280 Ga. App. 522, 634 S.E.2d 480 (2006).

Under the plain and ordinary language of O.C.G.A. § 17-6-72(d)(1), a bondsman who failed to assist in the arrest of the principal of its bond was not entitled to a 50 percent remission of the same, and the district attorney's consent to the bondsman's motion had no legal effect, as such was not accepted by the trial court. *Joe Ray Bonding Co. v. State of Ga.*, 284 Ga. App. 687, 644 S.E.2d 501 (2007).

Pursuant to cardinal rule of statute construction of O.C.G.A. § 1-3-1(a), plaintiffs had no standing to challenge facial constitutionality of O.C.G.A. § 16-11-34.2(b)(2) and (b)(4), funeral picketing statute, because they admitted that they did not intend to impede, disrupt, or interfere with any funerals; thus, without mens rea, there was no real risk of being prosecuted and they had not been threatened with arrest. *Hood v. Perdue*, 540 F. Supp. 2d 1350 (N.D. Ga. 2008).

**In construing conflicting legitimization statutes**, which permitted a jury trial (O.C.G.A. § 19-7-22), with paternity statute, which expressly prohibited a jury trial (O.C.G.A. § 19-7-40), and due to the fact that the two proceedings were consolidated, the legislative ban on jury trials provided for in the paternity statute had to prevail as to hold otherwise would allow a party to thwart the paternity statute's

goals of identifying the father and making sure the father paid child support. *Banks v. Hopson*, 275 Ga. 758, 571 S.E.2d 730 (2002).

**"Bribery" has clear definition.** — Within the context of O.C.G.A. § 16-10-2(a)(2), it is only "gifts" which are excepted from the purview thereof and not "bribes," no matter how small the amount involved; accordingly, where a trial court construed § 16-10-2 and held that small amounts of cash that added up to less than \$100, which were accepted by defendant, a detention officer, from inmates, were specifically excepted from the offense of bribery, it did not construe the statute using the ordinary meaning of the words pursuant to O.C.G.A. § 1-3-1(b), which was error. *State v. Fortner*, 264 Ga. App. 783, 592 S.E.2d 454 (2003).

### Legislative Intent

**Construction with homestead exemption statute.** — Chapter 7 trustee's objection to a debtor's claim for a \$20,000 exemption in debtor's residence under the Georgia homestead exemption statute, O.C.G.A. § 44-13-100(a)(1), was overruled because: (1) O.C.G.A. § 1-3-1 did not invite a court to usurp the power of the General Assembly by legislating from the bench each time the exemption statute created an unusual result; (2) the duration of the debtor's separation from debtor's wife, while indicative of a desire to discontinue the traditional role of spouse, was not determinative of a circumstance that would authorize the court to consider such a person as an entity other than a "spouse" as used in the homestead exemption statute; and (3) there was no basis for inferring legislative intent to allow married couples, whether they lived together or separately, to spread a \$20,000 exemption across multiple residences. In re *Green*, 319 B.R. 913 (Bankr. M.D. Ga. 2004).

**Construction with O.C.G.A. § 9-11-6.** — Because the responding party timely responded to a summary judgment motion, pursuant to Ga. Unif. Super. Ct. R. 6.3, given the appellate court's construction of both O.C.G.A. §§ 1-3-1 and 9-11-6, the trial court erred in denying that party oral argument on said motion and in granting sum-



mary judgment to the movant. *Green v. Raw Deal, Inc.*, 290 Ga. App. 464, 659 S.E.2d 856 (2008).

### Words' Signification

**A riding lawnmower was not a "motor vehicle" as that term was used in the statute punishing theft of a motor vehicle, O.C.G.A. § 16-8-12(a)(5)(A);** a defendant's conviction was reversed. A motor vehicle was defined by the court for purposes of § 16-8-12(a)(5)(A) as a self-propelled vehicle with wheels that was designed to be used, or was ordinarily used, to transport people or property on roads. *Harris v. State*, 286 Ga. 245, 686 S.E.2d 777 (2009).

### Substantial Statutory Compliance

**Substantial compliance with Georgia Historic Preservation Act.** — Because the Georgia Historic Preservation Act (HPA), O.C.G.A. § 44-1-20 et seq., does not expressly provide that a county's failure to strictly comply with the HPA's uniform procedures invalidates an ordinance adopted thereunder, and because the developers failed to show the developers were harmed by the county's alleged failure to strictly comply with the procedures of the HPA, the trial court properly applied the "substantial compliance" standard of review. *Buckler v. DeKalb County Bd. of Comm'rs*, 299 Ga. App. 465, 683 S.E.2d 22 (2009), cert. denied, No. S09C2027, 2010 Ga. LEXIS 3 (Ga. 2010).

**Substantial compliance not sufficient when statute is unambiguous.** — Court of Appeals erred when the court held that a judgment creditor's notification of a judgment debtor of a garnishment eight business days after service of the garnishee substantially complied with O.C.G.A. § 18-4-64(a)(7)'s requirement that notice be given within three business days. O.C.G.A. § 1-3-1 did not apply because the statute was unambiguous. *Cook v. NC Two, L.P.*, 289 Ga. 462, 712 S.E.2d 831 (2011).

**Substantial compliance with legitimation statute, O.C.G.A. § 19-7-22.** — Trial court abused the court's discretion by denying a putative biological father's motion to sever his petition for legitimation of a son from a husband's adoption

proceeding because the father's petition substantially complied with the substance of the legitimation statute, O.C.G.A. § 19-7-22; the petition contained the requisite information, it was served on the wife, and it was timely filed in the proper court, and the father's failure to file his petition as a separate civil action caused no prejudice to anyone. *Brewton v. Poss*, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

### Computation of Time

**If last day Sunday, then have until Monday.** — Trial court did not abuse the court's discretion in setting aside a default judgment entered in favor of former police officers under O.C.G.A. § 9-11-60(d) because the default judgment was entered despite the fact that the record disclosed that a pension fund board of trustees timely answered the complaint and, thus, there was no basis upon which to claim a default judgment; the board's answer was filed 31 days after service, but because that day was a Monday and the 30th day after service fell on a Sunday, under O.C.G.A. § 1-3-1(d)(3), the answer was timely. *Stamey v. Policemen's Pension Fund Bd. of Trs.*, 289 Ga. 503, 712 S.E.2d 825 (2011).

**Error in calculation of time for service.** — Trial court erred in calculating the five-day period under O.C.G.A. § 9-11-4(c) for service of a client's complaint because the provisions of O.C.G.A. § 1-3-1(d)(3) applied since the five-day requirement was less than seven days; because the client filed the complaint on Friday, August 14, 2009, the client had until Friday, August 21, 2009 in which to achieve service in accordance with O.C.G.A. § 9-11-4(c) since the intervening Saturday and Sunday, August 15 and 16, 2009, were excluded from the calculation of the five-day period. *Cleveland v. Katz*, 311 Ga. App. 880, 717 S.E.2d 500 (2011).

**Computation of time specified in local statute.**

When an arrestee sued police officers for executing an allegedly expired search warrant at the arrestee's home, the officers were entitled to qualified immunity and, thus, summary judgment dismissing the claim because while O.C.G.A. § 17-5-25 required a search warrant's ex-

ecution within ten days after the warrant's issuance, it was unclear, as of the warrant's execution, that O.C.G.A. § 1-3-1(d)(3), regarding time computation, did not extend that time period to make that execution timely since the tenth day after the warrant was issued fell on a Sunday, followed by a legal holiday, immediately after which the warrant was executed. *Hurley v. City of St. Marys*, No. 209-212, 2011 U.S. Dist. LEXIS 7399 (S.D. Ga. Jan. 26, 2011).

**Filing of claim bound by two-year limitation.** — Pursuant to O.C.G.A. § 1-3-1(d)(3), the plaintiff had until October 28, 1998, to file an action arising from an incident which occurred on October 27, 1996, for which a two year statute of limitations applied. *Reese v. City of Atlanta*, 247 Ga. App. 701, 545 S.E.2d 96 (2001).

**Service of responses to requests to admit.** — Service of responses to requests to admit was timely as calculated pursuant to O.C.G.A. § 1-3-1(d)(3); therefore, the requests were not deemed admitted. The fact that the certificate of service was not filed with the clerk under Ga. Unif. Super. Ct. R. 5.2 until later did not impact the fact that service of the responses was timely. *Cruickshank v. Fremont Inv. & Loan*, 307 Ga. App. 489, 705 S.E.2d 298 (2010).

**Defamation complaint timely filed.** — Natural gas marketer's defamation complaint was timely filed because the complaint was filed on the first anniversary of the date of publication; O.C.G.A. § 1-3-1(d)(3) applies to the one-year statute of limitation for injuries to the reputation found in O.C.G.A. § 9-3-33, so that the first day shall not be counted in determining whether a claim is timely filed. *Infinite Energy, Inc. v. Pardue*, 310 Ga. App. 355, 713 S.E.2d 456 (2011).

**Larger and more extensive statutory expression controls.** — Interest earned on educational purpose sales taxes and on special county one percent sales and use taxes becomes part of the tax

## Illustrative Cases

**Lien laws must be strictly construed.** — Georgia's law providing for a hospital lien against a patient for services rendered, O.C.G.A. § 44-14-470 et seq., must be strictly construed. *MCG Health, Inc. v. Owners Ins. Co.*, 302 Ga. App. 812, 692 S.E.2d 72 (2010).

**SLAPP statute applied to non-Georgia residents.** — Considering the text of the statute, the legislature's purpose, and the evil the statute was designed to correct, O.C.G.A. § 9-11-11.1(a), Georgia's Anti-SLAPP statute, encompassed a press conference held outside the territorial limits of Georgia by New York defendants. Because the press conference was held to address an issue under consideration by a judicial body, i.e., a nuisance lawsuit filed by the New York defendants against gun dealers, a Georgia gun dealer's slander suit was dismissed for failure to file a verification as required by § 9-11-11.1(b). *Adventure Outdoors, Inc. v. Bloomberg*, 307 Ga. App. 356, 705 S.E.2d 241 (2010), cert. denied, No. S11C0648, 2011 Ga. LEXIS 402; cert. denied, U.S. , 132 S. Ct. 763, 181 L. Ed. 2d 485 (2011).

**Hijacking a motor vehicle statute.** — Because the text of the hijacking statute, O.C.G.A. § 16-5-44.1, does not define "obtain", a court looks to the ordinary meaning of that word, given that it was not a term of art or a technical term pursuant to O.C.G.A. § 1-3-1(b); ordinarily, "obtain" means to gain or attain possession, usually by some planned action or method, and applying the ordinary meaning of "obtain", the offense of hijacking a motor vehicle is concluded when possession of the motor vehicle is attained. *Jackson v. State*, 309 Ga. App. 24, 709 S.E.2d 44 (2011).

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proceeds in the account fund, which fund is required to be used exclusively for the purposes specified in the resolution or ordinance calling for the imposition of the tax. 2001 Op. Att'y Gen. No. 2001-3.



### 1-3-3. Definitions.

As used in this Code or in any other law of this state, the term:

- (1) "Abode" ordinarily means domicile.
- (2) "Accident" means an event which takes place without one's foresight or expectation or design.
- (3) "Act of God" means an accident produced by physical causes which are irresistible or inevitable, such as lightning, storms, perils of the sea, earthquakes, inundations, sudden death, or illness. This expression excludes all idea of human agency.
- (4) "Aforesaid" means next before.
  - (4.1) "Agriculture," "agricultural operations," or "agricultural or farm products" means raising, harvesting, or storing of crops; feeding, breeding, or managing livestock or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, fowl, or animals; or the production of aquacultural, horticultural, dairy, livestock, poultry, eggs, and apiarian products. If the term "agriculture," "agricultural operations," or "agricultural or farm products" is defined in Title 2, Title 4, Title 10, or Title 11 or in any chapter, article, part, subpart, or Code section of such titles, such specific definition shall control for such purposes over the definition contained in this paragraph. Agricultural or farm products are considered grown in this state if such products are grown, produced, or processed in this state, whether or not such products are composed of constituent products grown or produced outside this state.
- (5) "As soon as possible" means within a reasonable time, having due regard to all the circumstances.
- (6) "Child" or "grandchild" means legitimate descendants.
- (7) "County governing authority" means the board of county commissioners, the sole county commissioner, or the governing authority of a consolidated government.
  - (7.1) "Crops" or "growing crops" means fruits and products of all annual or perennial plants, trees, and shrubs and shall also include plants, trees, shrubs, and other agricultural products that are produced for sale. If the term "crops" or "growing crops" is defined in Title 2, Title 4, or Title 10 or in any chapter, article, part, subpart, or Code section of such titles, such specific definition shall control for such purposes over the definition contained in this paragraph.

(8) “Following” means next after.

(9) “Lunatic,” “insane,” or “non compos mentis” each includes all persons of unsound mind.

(10) “May” ordinarily denotes permission and not command. However, where the word as used concerns the public interest or affects the rights of third persons, it shall be construed to mean “must” or “shall.”

(11) “Month” means a calendar month. A scholastic month in public schools is 20 school days.

(12) “Oath” includes affirmation.

(13) “Penitentiary” means any place where inmates are confined under the authority of any law of this state.

(14) “Person” includes a corporation.

(15) “Preceding” means next before.

(16) “Property” includes real and personal property.

(16.1) “Ratites” mean any members of the ratite family, including but not limited to ostriches, emus, and rheas, which are not indigenous to this state and which are raised for the purpose of producing meat, fiber, or animal by-products or as breeding stock. For the purposes of the laws of this state, ratites shall be treated as poultry and the term poultry as used in this Code or any law of this state shall include ratites unless such ratites are specifically excluded from the operation of any such law or unless such law or the operation thereof is restricted to a certain type of poultry.

(17) “Seal” includes impressions on the paper itself, as well as impressions on wax or wafers. With the exception of official seals, a scrawl or any other mark intended as a seal shall be held as such.

(18) “Sickness” means any affection of the body which deprives it temporarily of the power to fulfill its usual functions.

(19) “Signature” or “subscription” includes the mark of an illiterate or infirm person.

(19.5) “Statutory overnight delivery” shall have the meaning provided for in subsection (b) of Code Section 9-10-12.

(20) “Trespass” means any misfeasance, transgression, or offense which damages another’s health, reputation, or property.

(21) “Until,” when used with reference to a certain day, includes all of such day.

(22) “Whereas” means considering that.

(23) “Writing” includes printing and all numerals.

(24) “Year” means a calendar year. (Laws 1838, Cobb’s 1851 Digest, pp. 274, 536; Laws 1833, Cobb’s 1851 Digest, p. 780; Code 1863, § 6; Code 1868, § 5; Code 1873, § 5; Code 1882, § 5; Civil Code 1895, § 5; Penal Code 1895, § 2; Ga. L. 1896, p. 82, § 1; Civil Code 1910, § 5; Penal Code 1910, § 2; Code 1933, § 102-103; Ga. L. 1957, p. 477, § 6; Ga. L. 1987, p. 1482, § 1; Ga. L. 1991, p. 1849, § 1; Ga. L. 1992, p. 2398, § 1; Ga. L. 1995, p. 347, §§ 1, 2; Ga. L. 2000, p. 1589, § 1; Ga. L. 2001, p. 362, § 23; Ga. L. 2008, p. 458, § 1/SB 364.)

**The 2001 amendment**, effective July 1, 2001, substituted “Title 2, Title 4, Title 10, or Title 11” for “Title 2, Title 4, or Title 10” in the second sentence in paragraph (4.1).

**The 2008 amendment**, effective May 12, 2008, in paragraph (4.1), in the first sentence, deleted “ratites,” preceding “and

rabbits”, and inserted “ratites,” near the middle; and, in paragraph (16.1), substituted “poultry” for “livestock” and “livestock” three times in the last sentence.

**Law reviews.** — For survey article on law of torts, see 59 Mercer L. Rev. 397 (2007).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

“ACCIDENT”

“ACT OF GOD”

“MONTH”

“PERSON”

“TRESPASS”

#### General Consideration

**Cited** in Valley Place, Ltd. v. T.I. Equity Fund, L.P., 246 Ga. App. 378, 541 S.E.2d 37 (2000); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003); White v. Shamrock Bldg. Sys., 294 Ga. App. 340, 669 S.E.2d 168 (2008); Pelphrey v. Cobb County, 547 F.3d 1263 (11th Cir. 2008); Meredith v. Thompson, 312 Ga. App. 697, 719 S.E.2d 592 (2011).

#### “Accident”

**Defendant willfully and wantonly fires loaded pistol.**

Because the underlying civil action did not involve allegations of an “accident,” and there was no “occurrence” under the terms of the insurance policy, defendant insurer had no duty to defend or indemnify plaintiffs in the underlying action and the insurer was entitled to summary

judgment on plaintiffs’ suit. Burt Co. v. Clarendon Nat’l Ins. Co., 385 Fed. Appx. 892 (11th Cir. 2010) (Unpublished).

**Intentional acts are not accidents under insurance policies.** — In an insurer’s declaratory judgment action to determine whether an insured’s policies provided coverage for purchasers’ claims against the insured, it was proper to grant the insurer summary judgment with regard to any construction defects that constituted breach of contract or breach of warranty because no coverage existed for damage to the construction project itself, and the insurer had no duty to provide coverage for the purchasers’ claims for breach of contract or breach of warranty; when an act was intentional, the act did not constitute an “accident” under the terms of the insured’s insurance policies. Forster v. State Farm Fire & Cas. Co., 307 Ga. App. 89, 704 S.E.2d 204 (2010).



**“Act of God”****Sudden loss of consciousness, etc.**

When the uncontradicted evidence in a suit involving two drivers showed that just before running a red light, the second driver had suffered a sudden and unforeseeable loss of consciousness, the co-executor for the second driver had established a prima facie case of an “act of God” defense under O.C.G.A. § 1-3-3(3); as the first driver had not rebutted this defense, it was proper to enter summary judgment for the co-executor. *Halligan v. Broun*, 285 Ga. App. 226, 645 S.E.2d 581 (2007).

**“Month”****Three months did not mean 90 days.**

— The 1991 version of O.C.G.A. § 44-14-361.1, requiring a contractor to file a contractor’s claim of lien three months from the completion of the work, governed and was satisfied by the contractor’s filing the claim of lien on September 12 following the completion of work on June 13. The court rejected the owner’s argument that “three months” meant 90 days. *Fed. Trust Bank v. C. W. Matthews Contr. Co.*, 312 Ga. App. 200, 718 S.E.2d 63 (2011).

**“Person”**

**Corporation was person for RICO purposes.** — On remand from the U.S.

Supreme Court, a class action suit filed by legal employees of a Georgia rug manufacturer, alleging state RICO violations based on the widespread hiring of illegal aliens in order to depress the hourly wages of its workers, survived a motion to dismiss for failure to state a claim; the federal appellate court deferred to the Supreme Court of Georgia’s holding that O.C.G.A. § 16-14-4, when read in conjunction with O.C.G.A. §§ 1-3-3(14) and 16-1-3(12), provided that “any person” could be sued under the Georgia RICO statute, including corporations such as the rug manufacturer. *Williams v. Mohawk Indus.*, 465 F.3d 1277 (11th Cir. 2006), cert. denied, mot. denied, 549 U.S. 1260, 127 S. Ct. 1381, 167 L. Ed. 2d 174.

**“Trespass”****Evidence insufficient to support “trespass” claim.**

Summary judgment was properly entered for a realtor as to a landowner’s trespass claim, as the landowner never determined that the silt fence was actually on the landowner’s property, and the realtor testified that the fence was located on a public right-of-way. *Sorrow v. Hadaway*, 269 Ga. App. 446, 604 S.E.2d 197 (2004).

**1-3-4. Effective date of legislative Acts.**

(a) Unless a different effective date is specified in an Act:

(1) Any Act which is approved by the Governor or which becomes law without his approval on or after the first day of January and prior to the first day of July of a calendar year shall become effective on the first day of July; and

(2) Any Act which is approved by the Governor or which becomes law without his approval on or after the first day of July and prior to the first day of January of the immediately succeeding calendar year shall become effective on the first day of January.

(b) Subsection (a) of this Code section shall not apply to local legislation or to resolutions intended to have the effect of law. Such local legislation and resolutions intended to have the effect of law become effective immediately upon approval by the Governor or upon their becoming law without his approval, unless a different effective date is

specified in the Act or resolution. (Ga. L. 1968, p. 1364, § 1; Ga. L. 1969, p. 7, § 1; Ga. L. 1985, p. 984, § 1; Ga. L. 2002, p. 985, § 2.)

**The 2002 amendment**, effective May 14, 2002, deleted former subsection (c) which read: “Subsection (a) of this Code section shall not apply to those general legislative Acts provided for in Code Section 1-3-4.1.”

JUDICIAL DECISIONS

**Effective date of amendment to kidnapping statute.** — The amendment to kidnapping statute providing that slight movement is sufficient to prove kidnapping as long as the movement was not incidental to another offense, and defining what actions would not be incidental to another offense, applies to crimes committed on or after the revised statute’s effective date, July 1, 2009, pursuant to O.C.G.A. § 1-3-4. *Decoteau v. State*, 302 Ga. App. 451, 691 S.E.2d 328 (2010).

**Cited in** *Duke v. State*, 298 Ga. App. 719, 681 S.E.2d 174 (2009); *Smith v. State*, 302 Ga. App. 222, 690 S.E.2d 867 (2010); *Smith v. State*, 312 Ga. App. 174, 718 S.E.2d 43 (2011).

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**Retroactive effective date clause in Act is void.** — A retroactive effective date clause in an Act is meaningless and void, in which event this Code section supplies the effective date, the same as if no effective date had been specified in the Act. 1976 Op. Att’y Gen. No. 76-76.

1-3-4.1. Effective date for general Acts requiring increases in compensation of certain county officials.

Notwithstanding the provisions of Code Section 1-3-4, no general Act which provides for an increase in compensation to one or more of the county officials listed in Article IX, Section I, Paragraph III of the Constitution or Chapter 10 of Title 15 shall be effective until the first day of January following passage of the Act. (Code 1981, § 1-3-4.1, enacted by Ga. L. 1985, p. 984, § 2; Ga. L. 1990, p. 1397, § 1; Ga. L. 1996, p. 1197, § 1; Ga. L. 1997, p. 11, § 1; Ga. L. 2002, p. 985, § 2; Ga. L. 2003, p. 140, § 1.)

**The 2002 amendment**, effective May 14, 2002, rewrote this Code section.

**The 2003 amendment**, effective May 14, 2003, part of an Act to revise, modernize, and correct the Code, revised language in this Code section.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, “Code Section” was substituted for “O.C.G.A.R.”.

1-3-5. Operation of laws generally; retrospective operation.

JUDICIAL DECISIONS

ANALYSIS

IMPAIRING OBLIGATION OF CONTRACTS

RETROSPECTIVE OPERATION  
REMEDIAL LAWS

### Impairing Obligation of Contracts

**Application to O.C.G.A. § 16-17-1.** — Request by creditors for a preliminary injunction blocking the enforcement of O.C.G.A. §§ 16-17-1 to 16-17-10 (the Act), which prohibited payday loans, did not address a case or controversy because the Act did not apply retroactively to loans made before its effective date; even if the Georgia Attorney General had not explicitly conceded this point, O.C.G.A. § 1-3-5 prohibited the retroactive application to impair the obligation of existing contracts. *BankWest, Inc. v. Baker*, 446 F.3d 1358 (11th Cir. 2006).

### Retrospective Operation

**Amendments of previous statutes, etc.**

Trial court did not err when the court applied the 2006 version of O.C.G.A. § 9-11-68 in the property owners' action against the builders because inasmuch as the owners did not obtain any judgment amount in the owners favor it did not matter whether the original or amended version of the statute was applied, or whether the amendment was substantive or procedural in nature; under either version of the statute the owners were liable for the builders' reasonable fees and expenses from the date the offer of settlement was rejected. *O'Leary v. Whitehall Constr.*, 288 Ga. 790, 708 S.E.2d 353 (2011).

**Criminal Justice Act construed.** — Upon the defendant's constitutional challenge to the retrospective application of three provisions of the Criminal Justice Act, 2005 Ga. Laws 20 (Act), no reversible error resulted from challenges to the clos-

ing arguments and admission of character evidence, as: (1) the former was not distinctly ruled upon by the lower court; and (2) the lower court sustained objections to the admissibility of character evidence, and thus, the state could not introduce character evidence regarding the defendant's prior criminal convictions; moreover, a change in the number of the defendant's peremptory challenges by the Act did not affect any protected right by the application of the amended version of O.C.G.A. § 15-12-165, as strikes were procedural and not substantive in nature. *Madison v. State*, 281 Ga. 640, 641 S.E.2d 789 (2007).

### Remedial Laws

**Georgia Whistleblower Act amendments not retroactive.** — New remedies under O.C.G.A. § 45-1-4(e)(2) and (f), which were added by a 2005 amendment to the Georgia Whistleblower Act (GWA), do not apply retroactively under O.C.G.A. § 1-3-5; thus, a port authority officer who asserted claims under the GWA in connection with the officer's 2004 discharge was limited to the remedies provided by the GWA as the GWA existed in 2004. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

### Statute of limitation, etc.

Three-year statute of limitations that was added to the Georgia Whistleblower Act (GWA) in 2005 in O.C.G.A. § 45-1-4(e)(1) is prospective in nature pursuant to O.C.G.A. § 1-3-5; thus, a port authority officer's GWA claim, which related to the officer's 2004 discharge, was not affected by the amendment. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

## 1-3-6. When laws become obligatory; effect of ignorance.

**Law reviews.** — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).



## JUDICIAL DECISIONS

**Section applies to law enforcement officers.** — *Hameen v. State*, 246 Ga. App. 599, 541 S.E.2d 668 (2000).

**Cited in** *Henry v. State*, 295 Ga. App. 758, 673 S.E.2d 120 (2009); *Ga. State*

*Licensing Bd. for Residential & Gen. Contrs. v. Allen*, 286 Ga. 811, 692 S.E.2d 343 (2010); *Mecca Constr., Inc. v. Maestro Invs., LLC*, 320 Ga. App. 34, 739 S.E.2d 51 (2013).

### 1-3-7. Abrogation of laws by agreement; waiver or renunciation of benefits established by law.

## JUDICIAL DECISIONS

## ANALYSIS

## ABROGATION OF LAWS

## 2. SPECIFIC ILLUSTRATIONS

## WAIVER OF BENEFITS

## 1. IN GENERAL

## 2. WAIVABLE RIGHTS

## 3. ACTIONS AMOUNTING TO WAIVER

## Abrogation of Laws

## 2. Specific Illustrations

#### Exculpation from liability for negligence generally.

Informed consent document signed by a decedent before using a fitness facility's pool was valid and enforceable because: (1) the document was clear and unambiguous; (2) the document was not void as against public policy; and (3) the document contained a covenant not to sue, a disclaimer of liability, and an assumption of risk clause wherein the decedent agreed to hold the facility and its employee harmless from any lawsuits for decedent's death, accidental or otherwise, that arose from any exercise program, whether formal or self-directed. *Flood v. Young Woman's Christian Ass'n of Brunswick, Ga., Inc.*, 398 F.3d 1261 (11th Cir. 2005).

#### Simulated aircraft aerial combat.

Although exculpatory clauses signed by a pilot and a safety pilot who flew an aircraft company's plane and engaged in simulated aerial combat were not against public policy under O.C.G.A. § 1-3-7, they were not enforceable if the company was found to have been grossly negligent or to have engaged in willful misconduct, which was an issue to be resolved by the jury; additionally, a jury issue remained as to whether one of the pilots was an indepen-

dent contractor for purposes of the company's liability under O.C.G.A. § 51-2-5(5), and accordingly, a grant of summary judgment pursuant to O.C.G.A. § 9-11-56 to the company was error. *McFann v. Sky Warriors, Inc.*, 268 Ga. App. 750, 603 S.E.2d 7 (2004).

## Waiver of Benefits

## 1. In General

**Subrogation may be expressly waived by an insurer pursuant to agreement.** — Homeowners retained the right to sue for damage done to their property, despite payment from their insurer, because language in proof of loss forms granted the insurer subrogation to the homeowners' rights, title, and interest in the property that was damaged, but not to the claim, and in any event the insurer expressly waived its right to subrogation in the release and settlement agreement executed contemporaneously with the issuance of the settlement payment. *Rabun & Assocs. Constr., Inc. v. Berry*, 276 Ga. App. 485, 623 S.E.2d 691 (2005).

## 2. Waivable Rights

**Jury trial.** — Before a defendant could effectively waive the right to a jury trial and demand a bench trial, the state's consent had to be obtained, in addition to

the trial court's agreement to conduct a bench trial pursuant to the defendant's demand. *Zigan v. State*, 281 Ga. 415, 638 S.E.2d 322 (2006).

### 3. Actions Amounting to Waiver

**Contracting to abide by restrictive covenants.** — Because a landowner was at liberty to waive a constitutional as well as a legal right, the superior court did not

abuse its discretion in restraining the landowner's continuing violation of restrictive covenants by hanging an unapproved non-commercial sign from the landowner's residence after the landowner had validly contracted to abide by the covenants which were mutually applicable to all lot owners. *Bryan v. MBC Partners, L.P.*, 246 Ga. App. 549, 541 S.E.2d 124 (2000).

## 1-3-8. Binding effect of legislation upon state.

### JUDICIAL DECISIONS

**Cited** in *Moreland v. State*, 304 Ga. App. 468, 696 S.E.2d 448 (2010).

## 1-3-9. Effect and enforcement of foreign laws.

### JUDICIAL DECISIONS

#### ANALYSIS

#### GENERAL CONSIDERATION

##### WHEN DOCTRINE OF COMITY INVOKED

#### 4. CONTRACTS

##### WHEN DOCTRINE OF COMITY NOT INVOKED

#### 2. STATUTES AND JUDGMENTS

### General Consideration

**Public policy controlled over contract terms.** — In answering a question certified from a federal appeals court in an action concerning a noncompetition agreement, the state supreme court held that, based on O.C.G.A. § 1-3-9, the law of the jurisdiction chosen by the parties to a contract to govern their contractual rights would not be applied by Georgia courts where application of the chosen law would contravene the policy of, or would be prejudicial to the interests of Georgia, and that covenants against disclosure and competition affected the interests of Georgia, namely the flow of information needed for competition among businesses, and hence their validity would be determined by the public policy of Georgia. *Convergys Corp. v. Keener*, 276 Ga. 808, 582 S.E.2d 84 (2003).

**Workers' compensation.** — Employer who paid a workers' compensation claimant workers' compensation benefits under

Texas law was not entitled to a subrogation claim to the proceeds of a tort settlement against the alleged tortfeasors under the full faith and credit and comity provisions of the U.S. Constitution. *Tyson Foods, Inc. v. Craig*, 266 Ga. App. 443, 597 S.E.2d 520 (2004).

**Cited** in *CS-Lakeview at Gwinnett, Inc. v. Simon Prop. Group, Inc.*, 283 Ga. 426, 659 S.E.2d 359 (2008); *Global Link Logistics, Inc. v. Briles*, 296 Ga. App. 175, 674 S.E.2d 52 (2009).

### When Doctrine of Comity Invoked

#### 4. Contracts

**Contract provision regarding support following artificial insemination.** — A Florida contract under which a mother relinquished her right to hold a sperm donor responsible for any resulting child was not unenforceable under O.C.G.A. § 1-3-9 as contrary to public policy. The contract was authorized by Florida law, and Georgia had held that

paternity through artificial insemination did not confer responsibility for support. *Brown v. Gadson*, 288 Ga. App. 323, 654 S.E.2d 179 (2007), cert. denied, 2008 Ga. LEXIS 236 (Ga. 2008).

### **When Doctrine of Comity Not Invoked**

#### **2. Statutes and Judgments**

**Indiana products liability law contravened Georgia public policy. —**

Public policy exception to *lex loci delicti* applied and Georgia law should have been applied in a design defect products liability case because Georgia recognized strict liability in such cases, pursuant to O.C.G.A. § 51-1-11, whereas Indiana law required a showing that the manufacturer failed to exercise reasonable care under the circumstances. *Bailey v. Cottrell, Inc.*, 313 Ga. App. 371, 721 S.E.2d 571 (2011).

## **1-3-11. Local referenda on abolishing offices or shortening or lengthening term.**

**Law reviews.** — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

## **JUDICIAL DECISIONS**

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Art. III, Sec. VII, Para. IX of the Constitution of Georgia of 1976 are included in the annotations for this Code section.

**Power of the General Assembly.** — Provision prohibiting the abolishing of elective office during term without a referendum submitted to the people of the area affected may not be extended by implication to place a restraint upon the general power of the General Assembly to create or abolish the charters of municipal corporations. *Mountain View v. Clayton County*, 242 Ga. 163, 249 S.E.2d 541 (1978).

**Change in mayor's duties.** — Because the legislature, at the request of a city council, passed legislation authorizing the city to change its form of government from a strong mayor/weak council system to a weak mayor/strong council system employing a city manager, this did not violate O.C.G.A. § 1-3-11, as the mayor's office continued to exist, albeit with largely ceremonial duties; the mayor's duties could be altered as long as the remaining duties were appropriate to the

office, which they were. *Griffin v. City Council*, 279 Ga. 835, 621 S.E.2d 734 (2005).

**Referendum not required.** — Because the legislature, at the request of a city council, passed legislation authorizing the city to change its form of government from a strong mayor/weak council system to a weak mayor/strong council system employing a city manager, no referendum was required under O.C.G.A. § 1-3-11 because the mayor's office was not abolished. *Griffin v. City Council*, 279 Ga. 835, 621 S.E.2d 734 (2005).

**Referendum improper where voters not informed that bill shortened member's term.** — Referendum changing the number of members on a board of education did not comply with O.C.G.A. § 1-3-11 because the voters were not informed that approval of the bill would shorten a board member's term by two years, but, instead, the bill and notice of intention to introduce local legislation incorrectly stated that it would provide for the continuation in office of current members. *Burton-Callaway v. Carroll County Bd. of Elections*, 279 Ga. 590, 619 S.E.2d 634 (2005).



## CHAPTER 4

## HOLIDAYS AND OBSERVANCES

Sec.		Sec.	
1-4-1.	Public and legal holidays; leave for observance of religious holidays not specifically provided for.	1-4-17.	Observance of "Georgia Day."
1-4-15.	Designation of "Bill Elliott Day."	1-4-18.	Designation of "School Bus Drivers Appreciation Day."
1-4-15.1.	Designation of "Ronald Reagan Day."	1-4-19.	Designation of "School Bus Safety Week."
1-4-16.	Designation of "Prison Chaplains Appreciation Day."	1-4-20.	Designation of Confederate History and Heritage Month.

### 1-4-1. Public and legal holidays; leave for observance of religious holidays not specifically provided for.

(a) The State of Georgia shall recognize and observe as public and legal holidays:

(1) All days which have been designated as of January 1, 1984, as public and legal holidays by the federal government; and

(2) All other days designated and proclaimed by the Governor as public and legal holidays or as days of fasting and prayer or other religious observance. In such designation the Governor shall include at least one of the following dates: January 19, April 26, or June 3, or a suitable date in lieu thereof to commemorate the event or events now observed by such dates.

(b) The Governor shall close all state offices and facilities a minimum of 12 days throughout the year and not more than 12 days in observance of the public and legal holidays and other days set forth in subsection (a) of this Code section and shall specify the days state offices and facilities shall be closed for such observances.

(c) Employees of any state department or agency shall, upon request to their appointing authority or his or her designee at least seven days in advance, be given priority consideration for time away from work for observance of religious holy days not otherwise provided for in this Code section. Any paid leave time for such religious holy day observance shall be charged to accrued compensatory leave or accrued annual leave credits available to the employee at the time of the holy day observance. No employee may claim priority consideration for more than three work days each calendar year. A request by an employee for time away from work to observe a religious holy day shall not be denied unless the employee has inadequate accrued compensatory or annual leave credits to cover such period of absence or the duties performed by the employee

are urgently required and the employee is the only person available who can perform the duties as determined by the appointing authority or his or her designee. The State Personnel Board shall provide by rule and regulation a procedure to be followed by agencies and departments in the granting of such holy days. (Laws 1850, Cobb's 1851 Digest, p. 522; Code 1863, § 2733; Code 1868, § 2741; Ga. L. 1870, p. 69, § 1; Ga. L. 1871-72, p. 23, § 1; Code 1873, § 2783; Ga. L. 1874, p. 19, § 1; Code 1882, § 2783; Ga. L. 1889, p. 72, §§ 1, 2; Ga. L. 1893, p. 115, § 1; Ga. L. 1894, p. 47, § 1; Civil Code 1895, § 3692; Ga. L. 1897, p. 119, § 1; Civil Code 1910, § 4284; Ga. L. 1929, p. 211, § 1; Code 1933, § 14-1808; Ga. L. 1935, p. 350, § 1; Ga. L. 1943, p. 331, § 1; Ga. L. 1945, p. 123, § 1; Ga. L. 1968, p. 986, § 1; Ga. L. 1969, p. 9, § 1; Ga. L. 1972, p. 363, § 1; Ga. L. 1975, p. 368, § 1; Ga. L. 1982, p. 986, §§ 1, 2; Ga. L. 1984, p. 22, § 1; Ga. L. 1984, p. 1274, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-1/HB 642.)

**The 2009 amendment**, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" twice in subsection (c).

**The 2012 amendment**, effective July 1, 2012, in subsection (c), inserted "or her" in the first and fourth sentences, deleted "or of any other department or agency covered by the State Personnel Administration" following "department or agency" in the first sentence, deleted "for employees in the classified service of the State Personnel Administration" following "holy days" in the next-to-last sentence, and deleted the former last sentence, which read: "The employing department or agency shall provide the procedures to be followed for all other employees."

**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

## JUDICIAL DECISIONS

**Thanksgiving Day and day after Thanksgiving.** — Superior court improperly dismissed as untimely appellant city's petition for a writ of certiorari challenging a civil service board's decision, as the petition was timely filed for purposes of O.C.G.A. § 5-4-6(a) since: (1) the last day to file the petition fell on Thanksgiving Day; (2) the Friday after Thanksgiving day, like Thanksgiving day, was a legal

holiday as set forth in O.C.G.A. § 1-4-1; and (3) the petition was filed on the very next business day, as allowed by O.C.G.A. § 1-3-1(d)(3). *City of Atlanta v. Hector*, 256 Ga. App. 665, 569 S.E.2d 600 (2002).

**Cited in** *McKenzie v. State*, 250 Ga. App. 277, 549 S.E.2d 774 (2001); *Morrell v. W. Servs., LLC*, 291 Ga. App. 369, 662 S.E.2d 215 (2008).

**1-4-2. Religious holidays.****JUDICIAL DECISIONS**

**Cited in** *In re Estate of Dasher*, 259 Ga. App. 201, 575 S.E.2d 921 (2002).

**1-4-15. Designation of “Bill Elliott Day.”**

(a) The General Assembly finds that a Georgia family’s proud tradition of racing began in Dawsonville, Georgia, under the tutelage and guiding hand of George Elliott. George’s young son Bill began to demonstrate at an early age a natural skill and competitive racing instinct at Dixie Speedway in Woodstock, and in 1976, at the tender age of 20, Bill Elliott entered his first Winston Cup race and launched a career that would span decades. Awesome Bill from Dawsonville, a modest, unassuming, and unpretentious man, has become a household name in NASCAR racing and has been selected Most Popular Driver an unprecedented 16 times, Georgia Professional Athlete of the Year twice, National Motorsports Driver of the Year 14 times, and in 1998, was inducted into the Georgia Sports Hall of Fame. It is virtually impossible to list all of the honors and awards Million Dollar Bill has garnered over his incandescent career, but perhaps his most acclaimed accomplishment is his support, love, and respect from racing fans. He has given unstintingly of his time, talents, energy, and financial resources to numerous charities including the Special Olympics, the M.D. Anderson Cancer Center, and the Make-A-Wish Foundation and it is abundantly fitting and proper that this extraordinary Georgian be recognized in a special and lasting manner.

(b) The members of the General Assembly commend Bill Elliott for his over 30 years of outstanding contributions to the sport of racing and designate October 8 of each year as “Bill Elliott Day” in Georgia. (Code 1981, § 1-4-15, enacted by Ga. L. 2005, p. 1159, § .1/SB 168; Ga. L. 2006, p. 72, § 1/SB 465.)

**Effective date.** — This Code section became effective January 1, 2006.

**The 2006 amendment**, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted “Bill Elliott Day” for “Bill Elliott Day” in subsection (b).

**1-4-15.1. Designation of “Ronald Reagan Day.”**

(a) The General Assembly recognizes that:

(1) President Ronald Wilson Reagan, a man of humble background, worked throughout his life serving freedom and advancing the public good, having been employed as an entertainer, Union



leader, corporate spokesman, Governor of California, and President of the United States;

(2) Ronald Reagan served with honor and distinction for two terms as the fortieth President of the United States of America, and in his reelection he earned the confidence of three-fifths of the electorate and was victorious in 49 of the 50 states in the general election, a record unsurpassed in the history of American presidential elections;

(3) During Mr. Reagan's presidency he worked in a bipartisan manner to enact his bold agenda of restoring accountability and common sense to government which led to an unprecedented economic expansion and opportunity for millions of Americans;

(4) Mr. Reagan's commitment to an active social policy agenda for the nation's children helped lower crime rates and drug use in our neighborhoods;

(5) President Reagan's commitment to our armed forces contributed to the restoration of pride in America, her values and those cherished by the free world, and prepared America's armed forces to meet twenty-first century challenges;

(6) President Reagan's vision of "peace through strength" led to the end of the Cold War and the ultimate demise of the Soviet Union, guaranteeing basic human rights for millions of people; and

(7) February 6, 2005, will be the ninety-fourth anniversary of Ronald Reagan's birth, and the first since his passing.

(b) February 6 of each year is designated "Ronald Reagan Day" in Georgia. (Code 1981, § 1-4-15.1, enacted by Ga. L. 2006, p. 139, § 1/HB 713; Ga. L. 2007, p. 47, § 1/SB 103.)

**Effective date.** — This Code section became effective July 1, 2006.

**The 2007 amendment,** effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(6).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, Code Section 1-4-15, as enacted by Ga. L. 2006, p. 139, § 1/HB 713, was redesignated as Code Section 1-4-15.1.

## 1-4-16. Designation of "Prison Chaplains Appreciation Day."

The fourth Monday in March of each year is designated and shall be observed as "Prison Chaplains Appreciation Day" in all state and private correctional institutions in Georgia. (Code 1981, § 1-4-16, enacted by Ga. L. 2006, p. 484, § 1/HB 1292.)

**Effective date.** — This Code section became effective July 1, 2006.

### 1-4-17. Observance of “Georgia Day.”

The twelfth day of February in each year is declared to be “Georgia Day,” as the anniversary of the landing of the first colonists in Georgia under Oglethorpe. (Code 1981, § 1-4-17, enacted by Ga. L. 2008, p. 2, § 1/HB 387.)

**Effective date.** — This Code section became effective July 1, 2008.

**Editor’s notes.** — This Code section formerly pertained to the designation of the year of the museum. The former Code section was based on Code 1981, § 1-4-17, enacted by Ga. L. 2006, p. 720, § 1/SB 195.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, Code Section 1-4-16, as enacted by Ga. L. 2006,

p. 720, § 1, was redesignated as Code Section 1-4-17.

Pursuant to Code Section 28-9-5, in 2008, Code Section 1-4-17, as enacted by Ga. L. 2008, p. 563, § 2, was redesignated as Code Section 1-4-18, and Code Section 1-4-17, as enacted by Ga. L. 2008, p. 566, § 2, was redesignated as Code Section 1-4-19.

### 1-4-18. Designation of “School Bus Drivers Appreciation Day.”

The third Monday in October of every year is designated “School Bus Drivers Appreciation Day” in Georgia. (Code 1981, § 1-4-18, enacted by Ga. L. 2008, p. 563, § 2/HB 791.)

**Effective date.** — This Code section became effective July 1, 2008.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, Code Section 1-4-17, as enacted by Ga. L. 2008, p. 563, § 2, was redesignated as Code Section 1-4-18.

**Editor’s notes.** — Ga. L. 2008, p. 563, § 1, not codified by the General Assembly, provided legislative findings related to the enactment of this Code section.

### 1-4-19. Designation of “School Bus Safety Week.”

The third week in October of every year is designated “School Bus Safety Week” in Georgia. (Code 1981, § 1-4-19, enacted by Ga. L. 2008, p. 566, § 2/HB 790.)

**Effective date.** — This Code section became effective July 1, 2008.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, Code Section 1-4-17, as enacted by Ga. L. 2008, p. 566, § 2, was redesignated as Code Section 1-4-19.

**Editor’s notes.** — Ga. L. 2008, p. 566, § 1, not codified by the General Assembly, provided legislative findings related to the enactment of this Code section.

### 1-4-20. Designation of Confederate History and Heritage Month.

(a) The General Assembly hereby finds and determines that tourism is a great economic resource in Georgia; and historical, heritage, and

cultural inheritance are among the tourism industry’s most popular attractions. Georgia’s Confederate heritage, physical artifacts and battle sites, and historic events and persons not only attract visitors, they are potentially of even greater importance and benefit to our state’s economy. Increased development of our state’s Confederate history and heritage as part of the tourism industry will be enhanced through recognizing, celebrating, and advertising that heritage and history.

(b) The month of April of each year is hereby designated as Confederate History and Heritage Month and shall be set aside to honor, observe, and celebrate the Confederate States of America, its history, those who served in its armed forces and government, and all those millions of its citizens of various races and ethnic groups and religions who contributed in sundry and myriad ways to the cause which they held so dear from its founding on February 4, 1861, in Montgomery, Alabama, until the Confederate ship CSS *Shenandoah* sailed into Liverpool Harbor and surrendered to British authorities on November 6, 1865.

(c) Officials and departments of state, county, and municipal governments, boards of education, elementary and secondary schools, colleges and universities, businesses, and all citizens are encouraged to participate in programs, displays, and activities that commemorate and honor our shared history and cultural inheritance throughout each April during Confederate History and Heritage Month. (Code 1981, § 1-4-20, enacted by Ga. L. 2009, p. 207, § 2/SB 27.)

**Effective date.** — This Code section Historical Civil Rights Museum,  
became effective July 1, 2009. § 50-3-85.  
**Cross references.** — Official Georgia

## TITLE 2

### AGRICULTURE

Chap.

1. General Provisions, 2-1-1 through 2-1-6.
2. Department of Agriculture, 2-2-1 through 2-2-13.
3. Georgia Agricultural Exposition Authority, 2-3-1 through 2-3-15.
4. Georgia Seed Development Commission, 2-4-1 through 2-4-10.
5. Registration, Licenses, and Permits Generally, 2-5-1 through 2-5-8.
6. Soil and Water Conservation, 2-6-1 through 2-6-52.
7. Plant Disease, Pest Control, and Pesticides, 2-7-1 through 2-7-170.
8. Agricultural Commodities Promotion, 2-8-1 through 2-8-135.
- 8A. Emerging Crops Fund Act, 2-8A-1 through 2-8A-7.
9. Dealers in Agricultural Products, 2-9-1 through 2-9-45.
10. Marketing Facilities, Organizations, and Programs, 2-10-1 through 2-10-140.
11. Seeds and Plants, 2-11-1 through 2-11-77.
12. Fertilizers, Liming Materials, and Soil Amendments, 2-12-1 through 2-12-110.
13. Commercial Feeds, 2-13-1 through 2-13-23.
14. Sale of Agricultural and Forest Products, 2-14-20 through 2-14-153.
15. Pacific White Shrimp Aquaculture Development, 2-15-1 through 2-15-14.
18. Georgia Tobacco Community Development Board, 2-18-1 through 2-18-6.
19. Georgia Cotton Producers Indemnity Fund, 2-19-1 through 2-19-8.
21. Organic Certification and Labeling, 2-21-1 through 2-21-8.



22. Poultry Contract Growers or Producers, 2-22-1 through 2-22-5.

CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
2-1-1.	Definitions.	2-1-5.	Annual license fee for grain dealers, commercial feed dealers, grain warehousemen, and qualified agriculture producers; retention of funds.
2-1-1.1.	Policy of state to promote sustainable agriculture.		
2-1-4.	Anti-siphon devices for irrigation systems; rules and regulations as to such devices; hearings on violations; administrative and judicial review; filing of final order; payment of penalty.	2-1-6.	Preemption of local ordinances relating to production of agricultural farm products.

2-1-1. Definitions.

As used in this title, the term:

- (1) “Commissioner” means the Commissioner of Agriculture.
- (2) “Department” means the Department of Agriculture of this state.
- (3) “Sustainable agriculture” or “sustainable agricultural practices” means science-based agricultural practices, technologies, or biological systems supported by research or otherwise demonstrated to lead to broad outcomes-based improvements, which may include but not be limited to such critical outcomes as increasing agricultural productivity and improving human health through access to safe, nutritious, affordable food and other agricultural products, while enhancing agricultural and surrounding environmental conditions through the stewardship of water, soil, air quality, biodiversity, and wildlife habitat, so as to meet the needs of the present and improve the ability for future generations to meet their own needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities. (Code 1981, § 2-1-1; Ga. L. 2011, § 1/HB 225.)

**The 2011 amendment**, effective July 1, 2011, added paragraph (3).

**Editor’s notes.** — This Code section

was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

**2-1-1.1. Policy of state to promote sustainable agriculture.**

It shall be the policy of this state to promote sustainable agriculture. (Code 1981, § 2-1-1.1, enacted by Ga. L. 2011, p. 248, § 2/HB 225.)

**Effective date.** — This Code section became effective July 1, 2011.

**2-1-4. Anti-siphon devices for irrigation systems; rules and regulations as to such devices; hearings on violations; administrative and judicial review; filing of final order; payment of penalty.**

(a) Any irrigation system which is designed or used for the application of fertilizer, pesticide, or chemicals must be equipped with an anti-siphon device adequate to protect against contamination of the water supply. Such anti-siphon device shall consist of a check valve and low pressure drain in the irrigation supply line located between the irrigation pump and the point of injection of fertilizer, pesticide, or chemicals. Any system which complied with the law in effect on January 1, 1982, shall be deemed to be in compliance with the provisions of this subsection.

(b) It shall be unlawful for any person to use any irrigation system designed or used for the application of fertilizer, pesticide, or chemicals, which system is not equipped as required by this Code section.

(c) The Commissioner shall make and publish in print or electronically such rules and regulations as he deems necessary to carry out this Code section, which rules and regulations are not inconsistent with this Code section. Such rules and regulations may specify requirements to be met by anti-siphon devices and the placement of such devices to provide adequate protection.

(d) The Commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant thereto, may issue an administrative order imposing a penalty not to exceed \$1,000.00 for each violation whenever the Commissioner, after a hearing, determines that any person has violated any provision of this Code section, or any regulation or order promulgated hereunder. The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the Commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All penalties recovered under this Code section shall be paid into the state treasury. The Commissioner may file in the superior court

wherein the person under order resides, or, if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and proceedings in relation thereto shall thereafter be the same, as though such judgment has been rendered in a suit duly heard and determined by such court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the Commissioner with respect to any violation of this Code section or any orders, rules, or regulations promulgated pursuant thereto. (Ga. L. 1981, p. 1256, §§ 1-4; Ga. L. 1982, p. 1232, §§ 1, 2; Ga. L. 1984, p. 22, § 2; Ga. L. 1989, p. 14, § 2; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in the first sentence of subsection (c).

### **2-1-5. Annual license fee for grain dealers, commercial feed dealers, grain warehousemen, and qualified agriculture producers; retention of funds.**

(a) An individual conducting business as a grain dealer, commercial feed dealer, and grain warehouseman shall pay an annual license fee in an amount not less than \$1,500.00 nor more than \$3,000.00. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) A qualified agriculture producer, as defined in Code Section 48-8-3.3, shall pay an annual license fee in an amount not less than \$15.00 nor more than \$25.00, but in no event shall the total amount of the proceeds from such fees exceed the cost of administering Code Section 48-8-3.3. (Code 1981, § 2-1-5, enacted by Ga. L. 1992, p. 2553, § 2.5; Ga. L. 2001, p. 1070, § 1; Ga. L. 2010, p. 9, § 1-1/HB 1055; Ga. L. 2012, p. 257, § 5-7/HB 386.)

**The 2001 amendment**, effective July 1, 2001, substituted “\$2,000.00” for “\$1,500.00” at the end of this Code section.

**The 2010 amendment**, effective May 12, 2010, substituted “less than \$1,500.00 nor more than \$3,000.00” for “to exceed \$2,000.00” at the end of the first sentence and added the second sentence.

**The 2012 amendment**, effective January 1, 2013, designated the existing pro-

visions of this Code section as subsection (a) and added subsection (b).

**Editor’s notes.** — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed imme-



diately prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

**Law reviews.** — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

**2-1-6. Preemption of local ordinances relating to production of agricultural farm products.**

(a) No county, municipality, consolidated government, or other political subdivision of this state shall adopt or enforce any ordinance, rule, regulation, or resolution regulating crop management or animal husbandry practices involved in the production of agricultural or farm products on any private property.

(b) Subsection (a) of this Code section shall not prohibit or impair the power of any local government to adopt or enforce any zoning ordinance or make any other zoning decision. As used in this subsection, the terms “local government”, “zoning decision”, and “zoning ordinance” have the same meanings provided by Code Section 36-66-3.

(c) Subsection (a) of this Code section shall not prohibit or impair any existing power of a county, municipality, consolidated government, or other political subdivision of this state to adopt or enforce any ordinance, rule, regulation, or resolution regulating land application of human waste. (Code 1981, § 2-1-6, enacted by Ga. L. 2009, p. 444, § 1/HB 529.)

**Effective date.** — This Code section became effective May 1, 2009.

**CHAPTER 2**

**DEPARTMENT OF AGRICULTURE**

Sec.  
2-2-4. Commissioner of Agriculture  
— Salary and expenses; compensation of employees.  
2-2-8.1. Contributions for Farmers and

Sec.  
2-2-9.1. Consumers Market Bulletin and Poultry Market News.  
“Aggrieved or adversely affected” defined; administrative

Sec.	authority of Commissioner; hearing for individuals adversely affected; penalties; final decisions; judicial review of final decisions.	Sec.	rized in lieu of other action; funding to general treasury.
2-2-10.	Imposition of penalty autho-	2-2-13.	Enforcement of laws and rules within jurisdiction of Commissioner; employment of investigators.

**2-2-4. Commissioner of Agriculture — Salary and expenses; compensation of employees.**

(a) The annual salary of the Commissioner shall be as provided in Code Sections 45-7-3 and 45-7-4. The Commissioner shall be entitled to reimbursement of expenses as provided by Code Section 45-7-20.

(b) The Commissioner is authorized to employ personnel for the department, to prescribe their duties, and to fix the compensation of such personnel; provided, however, that such compensation shall be in accordance with the rules and regulations of the State Personnel Board. (Ga. L. 1874, p. 5, § 3; Code 1882, § 1465c; Civil Code 1895, § 1791; Ga. L. 1905, p. 73, § 1; Ga. L. 1906, p. 110, § 1; Civil Code 1910, § 2067; Ga. L. 1919, p. 75, § 1; Ga. L. 1919, p. 92, § 1; Code 1933, § 5-105; Ga. L. 1947, p. 673, § 1; Ga. L. 1956, p. 376, § 1; Ga. L. 1960, p. 106, § 1; Ga. L. 1963, p. 586, § 1A; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-2/HB 642.)

**The 2009 amendment**, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” near the middle of subsection (b).

**The 2012 amendment**, effective July 1, 2012, substituted “compensation shall be in accordance with” for “personnel who are under the State Personnel Administration shall be compensated under” near the end of subsection (b).

**Editor’s notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

**2-2-8.1. Contributions for Farmers and Consumers Market Bulletin and Poultry Market News.**

The Commissioner is authorized to publicize and request, by means of publication of appropriate notices in the *Farmers and Consumers Market Bulletin* and the *Poultry Market News*, contributions to be used exclusively for the compilation, publication, printing, and distribution of the *Farmers and Consumers Market Bulletin* and the *Poultry Market News*. (Code 1981, § 2-2-8.1, enacted by Ga. L. 1995, p. 353, § 1; Ga. L. 2010, p. 9, § 1-2/HB 1055.)

The 2010 amendment, effective May 12, 2010, inserted “and the *Poultry Market News*” twice in the first sentence; and deleted the former second sentence, which read: “Any voluntary contribution made

for such purpose shall be received by the Commissioner, shall be separately accounted for, need not be deposited in the state treasury, and shall be used and expended solely for the purpose donated.”

**2-2-9.1. “Aggrieved or adversely affected” defined; administrative authority of Commissioner; hearing for individuals adversely affected; penalties; final decisions; judicial review of final decisions.**

(a) As used in this Code section, the term “aggrieved or adversely affected” means that the challenged action has caused or will cause the person injury in fact, and the injury is to an interest within the zone of interests to be protected or regulated by the statute that the Commissioner is empowered to administer and enforce.

(b) The Commissioner shall issue all orders and perform actions to include impoundments; quarantine; the issuance, suspension, denial, or revocation of registrations, licenses, or permits; or approval or denial of applications for registrations, licenses, or permits provided for in such federal and state laws as are to be enforced by the Department of Agriculture.

(c) Any administrative order issued by the Commissioner shall specify the alleged violation, monetary penalty, or other sanction; prescribe a reasonable time for some type of action to be accomplished; and provide notice of the right to a hearing. Any order issued pursuant to this Code section shall become final unless the aggrieved or adversely affected registrant, licensee, permittee, applicant, equine owner, livestock owner, dog or cat owner, exotic and pet bird owner, or farmer of crops or livestock, chickens, or other animals timely requests a hearing in writing as provided by this Code section.

(d) Any registrant, licensee, permittee, applicant, equine owner, livestock owner, dog or cat owner, exotic and pet bird owner, or farmer of crops or livestock, chickens, or other animals aggrieved or adversely affected by any order or action of the Commissioner to include the issuance, suspension, denial, or revocation of a registration, license, permit, or application; impoundment; quarantine; or stop sale, stop use, or stop removal order; upon petition within 30 days after the issuance of such order or the taking of such action, shall have a right to a hearing before a hearing officer appointed or designated for such purpose by the Commissioner. The decision of the hearing officer shall constitute an initial decision of the Department of Agriculture, and any party to the hearing, including the Commissioner, shall have the right to final agency review before the Commissioner in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” and the provisions of this chapter.



(e) Where a statute for which the Commissioner has responsibility for administration or enforcement or a provision of Article 1 of Chapter 13 of Title 50 provides for different administrative procedures in providing for a notice and opportunity to be heard other than those specified in this Code section, the Commissioner may elect which procedure to be used on a case-by-case basis.

(f) In the event the Commissioner asserts in response to the petition before the hearing officer that the petitioner is not aggrieved or adversely affected, the hearing officer shall take evidence and hear arguments on such issue and thereafter make a ruling on such issue before continuing with the hearing. The burden of going forward with evidence on such issue shall rest with the petitioner. The decision of the hearing officer shall constitute the initial decision of the Commissioner; and any party to the hearing, including the Commissioner, shall have the right for final agency review before the Commissioner in accordance with Chapter 13 of Title 50.

(g) Prior to notice, hearing, or determination, the Commissioner is authorized to impose civil penalties in settlement of contested cases through administrative consent orders. The Commissioner is authorized to impose through administrative consent orders civil penalties of up to and including the applicable maximum amounts provided by paragraph (1) of subsection (h) of this Code section. Any civil penalties recovered shall be paid over into the general fund of the state treasury in accordance with Code Section 45-12-92.

(h)(1) The Commissioner may seek civil penalties for the violation of those laws to be enforced by the Department of Agriculture; and where the imposition of such civil penalties is provided for therein, the Commissioner upon written request may cause a hearing to be conducted before a hearing officer appointed or designated by the Commissioner for the purpose of determining whether such civil penalties should be imposed in accordance with the applicable law; and where the imposition of such civil penalties is not provided for therein but violation of such law is punishable as a criminal offense, the Commissioner upon written request may cause a hearing to be conducted before a hearing officer appointed or designated by the Commissioner for the purpose of determining whether civil penalties in an amount not to exceed \$1,000.00 per violation should be imposed. Any civil penalties recovered shall be paid over into the general fund of the state treasury in accordance with Code Section 45-12-92. The Commissioner may require any person to obtain a surety bond on the balance of a monetary penalty or suspended portion of a monetary penalty imposed on such person pursuant to a consent order or final decision from which no further review is taken or allowed. If any aggrieved or adversely affected party fails to follow

the terms of such consent order or final decision, the Commissioner may commence and maintain an action against the principal and surety on the bond.

(2) The decision of the hearing officer shall constitute the initial decision of the Commissioner; and any party to the hearing, including the Commissioner, shall have the right of final agency review before the Commissioner in accordance with Chapter 13 of Title 50.

(3) In rendering a decision on a requested civil penalty, the hearing officer shall consider all relevant factors including, but not limited to, the following:

(A) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(B) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply with or to correct the violation or failure to comply;

(C) Any prior violations of, or failures by, such person to comply with statutes, rules, regulations, or orders administered, adopted, or issued by the Commissioner;

(D) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure to comply;

(E) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure to comply; and

(F) The character and degree of intent with which the conduct of the person incurring the civil penalty was carried out.

(i)(1) Once the hearing officer issues an initial decision, that decision may be appealed by any party to the Commissioner for final agency review. The party requesting final agency review shall have 30 days from notice of the initial decision to file an application for final agency review. If the initial decision is not appealed within 30 days by any party, it shall be deemed final without need of any further proceedings.

(2) In application, the party requesting final agency review from the Commissioner shall include a short and plain statement of:

(A) The reasons for seeking review; and

(B) Any alleged errors in the initial decision.

(3) The Commissioner may in his or her discretion seek review on his or her own motion pursuant to subsection (a) of Code Section 50-13-17.

(4) Opposing parties may submit statements in response within 20 days of service of an application for final agency review.

(5) A copy of any application for final agency review or in opposition of application for review shall be served on all parties and their counsel as well as the Commissioner.

(j)(1) The standard for final agency review of the initial decision shall be de novo review.

(2) The Commissioner may only review the record considered by the hearing officer in the initial decision hearing. The Commissioner shall not rely on investigative files.

(3) The Commissioner shall possess all the powers that the hearing officer had during the initial decision hearing.

(4) There shall be a presumption of correctness for the hearing officer's credibility determination of witnesses appearing before the hearing officer.

(5) The Commissioner shall not base his or her decision on conjecture, speculation, or impermissible inferences.

(k)(1) The hearing officer shall forward to the Commissioner prior to review:

- (A) A copy of the record of the case including the initial decision;
- (B) All pleadings;
- (C) Transcripts of the hearing; and
- (D) All exhibits.

(2) During the final agency review, the Commissioner may hear or take testimony from any party, including the registrant, licensee, permittee, applicant, equine owner, livestock owner, dog or cat owner, exotic and pet bird owner, or farmer of crops or livestock, chickens, or other animals based on such authority as existed during the initial decision hearing.

(3) A party may file a motion not less than 14 days prior to the date of the final agency review to introduce evidence not submitted at the initial decision hearing. Additional evidence may be admitted only if it is material and if good cause exists for not presenting the evidence at the initial decision hearing. Opposing parties may submit responding motions in support of suppression of additional evidence seven days prior to the final agency review. Copies of all motions shall be



served on the other party and its counsel as well as the Commissioner.

(1)(1) The final decision shall be in writing, and if an initial decision is modified, the Commissioner shall give his or her reasons therefor in the form of findings of fact and conclusions of law, separately stated, along with the effective date of the final decision. If the Commissioner does not issue a final decision within 30 days, the initial decision shall be deemed final without need of further proceedings. Further, once the initial decision is final, a party's right to judicial review shall be extinguished.

(2) The Commissioner's final decision shall be rendered not later than 30 days from the date of the filing of an application for final agency review unless such period is extended pursuant to paragraph (4) of this subsection.

(3) The Commissioner may modify sanctions after review of an initial decision on appeal, stating the sanctions in the final decision. The Commissioner shall not have to make separate findings of fact to justify modified sanctions.

(4) The period of decision may be extended due to complexity of issues or volume of record materials. All parties involved shall be notified of any extension. A decision shall be rendered as soon as practicable.

(5) The Commissioner shall serve on the:

- (A) Opposing party;
- (B) Opposing party's counsel;
- (C) Agency counsel; and
- (D) Original hearing officer

any resulting decision or notify the above parties if there is no change to the initial decision along with a statement of rights on appeal to the opposing party and counsel within 30 days of any such decision.

(m)(1) A party, or the Commissioner on his or her own motion, may seek reconsideration by the Commissioner of a final agency decision.

(2) A party's written request for reconsideration must be submitted to the Commissioner within ten days of service of the final decision. The request shall include a short and plain statement of:

- (A) All matters alleged to have been erroneously decided; and
- (B) Any newly discovered factual matters and the reasons why any matters were not raised previously.

(3) Opposing parties may submit statements in response within 20 days of service of the request of the consideration.

(4) All requests for reconsideration and statements in opposition shall be served on all parties and the Commissioner.

(5) If the final agency decision is modified, the Commissioner shall give his or her reasons therefor in the form of findings of fact and conclusions of law along with the effective date of the decision.

(6) The Commissioner's reconsideration decision shall be rendered within 30 days following the latest filing deadline.

(n) Judicial review of the Commissioner's final decision may be had in accordance with Code Section 50-13-19.

(o)(1) Any order issued by the Commissioner under the laws of this state to be enforced by the Department of Agriculture pursuant to a final decision, either unappealed from as provided by law or affirmed or modified on any review or appeal, and from which no further review is taken or allowed, may be filed, by certified copy of the order or final decision from the department, in the superior court of the county wherein the person under order resides, or if such person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate; whereupon such superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

(2) The Commissioner may commence an action in any superior court of proper venue to enforce any order issued by him or her and made an order of the superior court pursuant to this Code section.

(p)(1) If a judicial review of the Commissioner's final decision is sought in accordance with Code Section 50-13-19, and the matter involves the impoundment of equines under Chapter 13 of Title 4, the "Georgia Humane Care for Equines Act," the Commissioner shall, along with his or her answer to the petition, include a statement of the costs incurred in the impoundment and care of the impounded animal or animals and an estimate of the future costs expected to be incurred in the care of the impounded animal or animals. The judge of the superior court may then require the petitioner to submit a surety bond to the court in an amount necessary to provide for the reasonable costs of care for the impounded animal or animals. In lieu of a surety bond, the court may accept a cash bond or property bond, which shall in all respects be subject to the same claims and actions as would exist against a surety bond.

(2) Upon the entering of a final adverse decision against an aggrieved party by the superior court, the Commissioner shall within 15 days deliver to the court and to the aggrieved party a statement of the costs incurred in the impoundment and care of the impounded animal or animals. The aggrieved party shall then render payment of such costs to the Commissioner within 15 days after the service of the statement of the costs. If the aggrieved party fails to render payment to the Commissioner within the time period required in this paragraph, the Commissioner may commence and maintain an action against the principal and surety on the bond of the aggrieved party as in any civil action. (Code 1981, § 2-2-9.1, enacted by Ga. L. 2004, p. 598, § 1; Ga. L. 2009, p. 446, § 1/SB 152; Ga. L. 2012, p. 698, § 1/HB 746; Ga. L. 2012, p. 1116, § 1/SB 367.)

**Effective date.** — This Code section became effective July 1, 2004.

**The 2009 amendment,** effective May 1, 2009, in the first sentence of subsection (c), inserted “monetary penalty, or other sanction;” near the beginning and substituted a semicolon for a comma near the end; in subsection (g), substituted “the applicable maximum amounts provided by paragraph (1) of subsection (h) of this Code section” for “\$1,000.00 per violation, except as otherwise authorized by law” at the end of the second sentence and added the third sentence; and, in paragraph (h)(1), in the first sentence, inserted “civil” near the middle and added “; and where the imposition of such civil penalties is not provided for therein but violation of such law is punishable as a criminal offense, the Commissioner upon written request may cause a hearing to be conducted before a hearing officer appointed or designated by the Commissioner for the purpose of determining whether civil penalties in an amount not to exceed \$1,000.00 per violation should be imposed” at the end, and added the last

sentence. See the Editor’s note for applicability.

**The 2012 amendments.** — The first 2012 amendment, effective July 1, 2012, added the last two sentences to paragraph (h)(1). The second 2012 amendment, effective July 1, 2012, substituted the present provisions of paragraph (1)(2) for the former provisions, which read: “The Commissioner’s decision must be rendered not later than 30 days following the date the initial decision was issued.”; and inserted “reconsideration” in paragraph (m)(6).

**Code Commission notes.** — Pursuant to Code Section § 28-9-5, in 2004, “section” was substituted for “Section” in subsection (a), punctuation was revised in subsections (b) and (d), and “for” was inserted after “statute” in subsection (e).

**Editor’s notes.** — Ga. L. 2009, p. 446, § 7, not codified by the General Assembly, provided that the amendment to this Code section shall apply to violations occurring on or after May 1, 2009.

**Law reviews.** — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

## JUDICIAL DECISIONS

**Hearing held not required before impounding horses under the Georgia Humane Care for Equines Act.** — Requiring hearings before impounding horses under the Georgia Humane Care for Equines Act, O.C.G.A. § 4-13-1 et seq., could cause further harm to animals being deprived of adequate food and water, thus,

there was no due process violation and defendant agency officials had qualified immunity on plaintiff animal owner’s claim; the safeguards of O.C.G.A. §§ 4-13-3 and 4-13-4, in connection with any seizure, and the procedure for requesting a hearing under O.C.G.A. § 2-2-9.1(d) after any seizure, were ade-



quate. *Reams v. Irvin*, 561 F.3d 1258 (11th Cir. 2009).

Because plaintiff equine owner could, pursuant to O.C.G.A. § 2-2-9.1(n), seek judicial review of defendant Georgia Department of Agriculture Commissioner's final decision as to the seizure of defendant's animals, and O.C.G.A. § 50-13-19(a), (h), provided a judicial

safety valve for review, the owner had no constitutional challenge to the procedural adequacy of the hearing-and-appeal procedure set forth in the Georgia Humane Care for Equines Act, O.C.G.A. § 4-13-1 et seq., and the Commissioner thus had qualified immunity on a due process claim. *Reams v. Irvin*, 561 F.3d 1258 (11th Cir. 2009).

## **2-2-10. Imposition of penalty authorized in lieu of other action; funding to general treasury.**

(a) In any proceeding before the Commissioner involving a license, certificate, or registration issued by the Commissioner or a violation of the laws administered and enforced by the Commissioner and the rules and regulations promulgated thereunder, after notice, hearing, and a determination by him or her as provided by law that there are sufficient grounds to revoke, suspend, or cancel the license, certificate, or registration involved or to take any other action authorized by law in regard to the violation in question, the Commissioner may impose a reasonable penalty for each offense in lieu of a revocation, suspension, cancellation, or other authorized action. Except as provided in subsection (b) of this Code section, such a penalty shall be imposed only with the consent of the affected party; and except as provided in subsection (b) of this Code section, the amount of any such penalty shall not exceed \$1,000.00.

(b) In any case subject to this Code section which involves a violation or attempted violation of the "Georgia Food Act," Article 2 of Chapter 2 of Title 26, the maximum penalty shall not exceed the greater of \$1,000.00 or the amount of gain realized or sought to be realized through such violation, but in no event shall such penalty exceed \$20,000.00; and in any case involving a violation or attempted violation of the "Georgia Food Act," the written consent of the person against whom the penalty is to be imposed shall not be required.

(c) Any civil penalties recovered shall be paid over into the general fund of the state treasury in accordance with Code Section 45-12-92. (Ga. L. 1960, p. 245, § 1; Ga. L. 1985, p. 1444, § 1; Ga. L. 2000, p. 1300, § 1; Ga. L. 2003, p. 838, § 1; Ga. L. 2009, p. 446, § 2/SB 152.)

**The 2003 amendment**, effective June 4, 2003, inserted "or her" in the first sentence of subsection (a), and deleted former subsection (c) which read: "In any case subject to this Code section which involves a permit suspension as authorized by Article 7 of Chapter 2 of Title 26, known as the 'Georgia Dairy Act of 1980,'

a monetary penalty may be assessed in lieu of the suspension; provided, however, that the maximum penalty shall not exceed the amount of gain that would be realized during the period of suspension, but in no event shall such penalty exceed \$20,000.00. In any case involving a monetary penalty in lieu of such permit sus-

pension, the written consent of the person against whom the penalty is to be imposed shall be obtained prior to its assessment.”

**The 2009 amendment**, effective May 1, 2009, added subsection (c).

### **2-2-13. Enforcement of laws and rules within jurisdiction of Commissioner; employment of investigators.**

(a) The Commissioner shall be vested with police powers to enforce those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43 and the rules and regulations adopted pursuant thereto and to prevent, detect, and respond to acts of bioterrorism, other terroristic acts or threats, or natural disasters affecting or potentially affecting plants, animals, products, or facilities that are subject to regulation by the department.

(b) The Commissioner shall be authorized to employ, designate, and deputize investigators and to delegate to such employees of the department the necessary authority to enforce those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43 and the rules and regulations adopted pursuant thereto and to prevent, detect, and respond to acts of bioterrorism, other terroristic acts or threats, or natural disasters affecting or potentially affecting plants, animals, products, or facilities that are subject to regulation by the department. Employees who have been so designated by the Commissioner and who have been certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the course of training required by Chapter 8 of Title 35, the “Georgia Peace Officer Standards and Training Act,” shall be authorized:

(1) To carry firearms authorized or issued by the Commissioner while in the performance of their duties;

(2) To inspect plants, animals, products, or facilities when the same are subject to regulation by the department;

(3) To stop and inspect any vehicle transporting plants, animals, or products when the same are subject to regulation by the department;

(4) To inspect and require the production of health certificates, waybills, permits, or other documents required by federal or state laws, rules, regulations, or orders for the transportation of plants, animals, or products when the same are subject to regulation by the department;

(5) To protect any life or property when the circumstances demand action; and

(6) To arrest any person found to be in violation of a criminal law when enforcement of such law is authorized under this subsection.

(c) From funds appropriated or available to the department, the Commissioner shall be authorized to provide motor vehicles, uniforms, firearms, and any other equipment and supplies needed by employees of the department to carry out this Code section.

(d) This Code section shall not repeal, supersede, alter, or affect the power of any other law enforcement officer of this state or of any county, municipality, or other political subdivision of this state. At the request of the Commissioner of Agriculture, it shall be the duty of all state, county, municipal, and other law enforcement officers in this state to enforce and to assist the Commissioner and the employees and agents of the department in the enforcement of those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43. (Code 1981, § 4-4-5, enacted by Ga. L. 1986, p. 425, § 2; Ga. L. 1990, p. 572, § 1; Code 1981, § 2-2-13, as redesignated by Ga. L. 2008, p. 575, § 1/SB 429.)

**The 2008 amendment**, effective July 1, 2008, redesignated former Code Section 4-4-5 as present Code Section 2-2-13; rewrote subsection (a); in subsection (b), in the introductory language, rewrote the first sentence and substituted “shall be authorized” for “are authorized” at the end of the second sentence; in paragraph (b)(2), substituted the present provisions for “To inspect any livestock found within this state”; in paragraph (b)(3), substituted the present provisions for “To stop and inspect any vehicle transporting livestock in this state”; in paragraph (b)(4), substituted “plants, animals, or products when the same are subject to regulation by the department;” for “livestock; and”; added present paragraph (b)(5); redesignated former paragraph (b)(5) as present paragraph (b)(6); and, in paragraph (b)(6), substituted “a criminal law when enforcement of such law is authorized under this subsection” for “this chapter”; in subsection (c), substituted “shall be authorized” for “is authorized” near the beginning and substituted “Code section” for “chapter” at the end; and in subsection (d), deleted “to enforce this chapter” following “state” at the end of the first sentence and substituted “those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43” for “this chapter” at the end of the last sentence.

nated former paragraph (b)(5) as present paragraph (b)(6); and, in paragraph (b)(6), substituted “a criminal law when enforcement of such law is authorized under this subsection” for “this chapter”; in subsection (c), substituted “shall be authorized” for “is authorized” near the beginning and substituted “Code section” for “chapter” at the end; and in subsection (d), deleted “to enforce this chapter” following “state” at the end of the first sentence and substituted “those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43” for “this chapter” at the end of the last sentence.

CHAPTER 3

GEORGIA AGRICULTURAL EXPOSITION AUTHORITY

Sec.		Sec.	
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**Editor’s notes.** — Ga. L. 2001, p. 894, § 1, repealed and reserved this chapter, relating to the Georgia Agrirama Development Authority, effective July 1, 2001. The former chapter was based on Ga. L. 1970, p. 568, §§ 1-3; Ga. L. 1972, p. 1161, §§ 1-11; Ga. L. 1975, p. 523, § 1; Ga. L. 1975, p. 713, § 1; Ga. L. 1975, p. 842, § 1; Ga. L. 1976, p. 698, § 1; Ga. L. 1980, p. 598, § 1;

Ga. L. 1980, p. 788; Ga. L. 1984, p. 898, § 1; Ga. L. 1988, p. 200, § 1; Ga. L. 1989, p. 1641, § 1; Ga. L. 1990, p. 872, § 1; Ga. L. 1995, p. 10, § 2. For comparable provisions, see Code Sections 12-3-650 through 12-3-661. Ga. L. 2011, p. 261, § 1, repealed the reservation of Code Sections 2-3-1 through 2-3-12.

2-3-1. Short title.

This chapter shall be known and may be cited as the “Georgia Agricultural Exposition Authority Act.” (Code 1981, § 12-3-470, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1996, p. 6, § 12; Code 1981, § 2-3-1, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment,** effective July 1, 2011, redesignated former Code Section 12-3-470 as present Code Section 2-3-1.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2011, “This chapter” was substituted for “This part” at the beginning of this Code section.

2-3-2. Definitions.

As used in this chapter, the term:

- (1) “Authority” means the Georgia Agricultural Exposition Authority.
- (2) “Cost of the project” means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; the cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized in this chapter, the construction of any project, the placing of the same in operation, and

the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of such bonds or obligations as may be issued by any authority, department, commission, or agency of the State of Georgia.

(3) “Project” means and includes one or a combination of two or more of the following: buildings, facilities, and all structures; electric, gas, steam, water, and sewerage utilities; and improvements of every kind and character deemed by the authority necessary or convenient for its purposes. (Code 1981, § 12-3-471, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1992, p. 6, § 12; Code 1981, § 2-3-2, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-471 as present Code Section 2-3-2.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2011, “this chapter” was substituted for “this part” in the introductory language and in the middle of the first sentence of paragraph (2).

### **2-3-3. Creation of authority; membership; vacancies; compensation and reimbursement; record keeping.**

(a) There is created a body corporate and politic to be known as the Georgia Agricultural Exposition Authority which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of this state.

(b) The authority shall consist of ten members, including nine appointed members and the Commissioner of Agriculture, ex officio. Initially, appointed members shall serve staggered terms of office as follows: two members for one year, two members for two years, two members for three years, and three members for four years. Thereafter, each appointed member shall serve for a term of four years. All appointed members shall be appointed by the Governor, confirmed by the Senate, and shall serve until the appointment and qualification of a successor. The members appointed by the Governor shall be selected from the state at large but shall be representative of all of the geographic areas of the state. Such members also shall represent the state’s agriculture and business interests. The Governor is authorized to appoint any elected or appointed state, county, municipal, or school board official or employee, except officials and employees of the legislative or judicial branches of state government, as members of the authority, and any person so appointed is authorized to serve as a member of the authority.

(c) All successors to appointed members shall be appointed in the same manner as original appointments. Vacancies in office of appointed members shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the unexpired term. The authority shall elect its own officers. No vacancy on the authority shall impair the right of the quorum to exercise all rights and perform all duties of the authority.

(d) The appointed members of the authority shall receive a daily expense allowance and reimbursement for transportation costs as provided for in Code Section 45-7-21; and the members of the authority shall not receive any other compensation for their services as such.

(e) The authority shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter.

(f) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all the books, together with the proper statement of the authority's financial position, to the state auditor.

(g) The authority is assigned to the Department of Agriculture for administrative purposes only. (Code 1981, § 12-3-472, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1990, p. 6, § 1; Ga. L. 2011, p. 261, § 2/HB 125; Code 1981, § 2-3-3, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-472 as present Code Section 2-3-3; inserted "appointed" in three places in subsection (b) and near the beginning of subsection (d); in subsection (b), in the first sentence, inserted "ten members, including" near the beginning and added "and the Commissioner of Agriculture, ex officio" at the end; in subsection (c), in-

serted "to appointed members" in the first sentence and inserted "of appointed members" in the second sentence; and substituted "Department of Agriculture" for "Department of Natural Resources" in subsection (g).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" twice in the last sentence of subsection (e).

## 2-3-4. Purpose and general business of authority.

The corporate purpose and the general nature of the business of the authority shall be:

(1) The provision of a facility for the agricultural community to present, exhibit, and promote its products and livestock to agribusiness persons and the public in an effort to boost the state's economy;



(2) The exhibition and promotion of agricultural accomplishments by the youth of this state;

(3) The provision of facilities and programs for public events, exhibits, and other activities, such as, but not limited to, fairs, nonagricultural exhibits, concerts, rodeos, flea markets, and auctions, which will make the authority as financially self-supporting as possible, benefit the state's economy, and attract the traveling public; and

(4) The promotion and staging of a state-wide fair at least once a year to accomplish one or more of the above purposes. (Code 1981, § 12-3-473, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-4, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-473 as present Code Section 2-3-4.

#### OPINIONS OF THE ATTORNEY GENERAL

**Authority not entitled to recreational exemption from federal overtime requirements.** — Since it was clear from former O.C.G.A. § 12-3-473 (now O.C.G.A. § 2-3-4) that the Georgia Agricultural Exposition Authority's principal activity was not that of an amusement park,

recreational establishment, organized camp, or nonprofit educational conference center, the authority cannot qualify for the recreational exemption from the overtime requirements of the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(3). 1989 Op. Att'y Gen. No. 89-8.

#### 2-3-5. Powers of authority generally.

The authority is authorized:

(1) To have a seal and alter it at pleasure;

(2) To acquire, hold, and dispose of personal property for its corporate purposes;

(3) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts and fiscal agents; to contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of accountants, engineers, architects, consultants, and advisors, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits;

(4) To make contracts and to execute all instruments necessary or convenient, including contracts for construction of projects or con-

tracts with respect to the leasing or use of projects which the authority causes to be subdivided, erected, or acquired;

(5) To plan, survey, subdivide, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in this chapter, such projects to be located on property owned or leased by the authority or the State of Georgia or under the control and management of the authority. The cost of any such project shall be paid from its income, from the proceeds of revenue anticipation certificates of the authority, or from such proceeds and any loan, gift, or grant from the United States of America or any agency or instrumentality thereof, or the State of Georgia, or any county, municipal corporation, authority, or local government or governing body;

(6) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(7) To borrow money for any of its corporate purposes, to issue negotiable revenue anticipation certificates from earnings of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(8) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(9) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the authority;

(10) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed as the authority may deem necessary or expedient in facilitating its business;

(11) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia, or any agency or instrumentality thereof, or from any county, municipal corporation, or local government or governing body;

(12) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or as appropriations by authority of the General Assembly for any of the purposes of this authority;

(13) To do all things necessary or convenient to carry out the powers and purposes of the authority;

(14) To acquire, lease (as lessee), purchase, hold, own, and use any franchise or any property, real or personal, tangible or intangible, or any interest therein; and to sell, lease (as lessor), transfer, or dispose thereof whenever the same is no longer required for purposes of the authority or exchange the same for other property or rights which are useful for the purposes of the authority;

(15) To fix, alter, charge, and collect fares, rates, rentals, and other charges for its facilities and for admission to its grounds at reasonable rates to be determined by the authority;

(16) To contract with the Georgia State Financing and Investment Commission for the construction of the project as provided for in Article 2 of Chapter 17 of Title 50; or to contract with other authorities, departments, or agencies of the State of Georgia for the construction of the project;

(17) To invest and reinvest any or all idle funds or moneys, including, but not limited to, funds held in reserve or debt retirement or received through the issuance of revenue certificates or from contributions, gifts, or grants, which cannot be immediately used for the purpose for which received, such investment to be made in any security or securities which are legal investments for executors or trustees; provided, however, that investments in such securities will at all times be held for and, when sold, used for the purposes for which the money was originally received;

(18) To grant, on an exclusive or nonexclusive basis, the right to use and occupy streets, roads, sidewalks, and other public places for the purpose of rendering utility services, upon such conditions and for such time as the authority may deem wise;

(19) To appoint special advisory committees and panels of citizens to advise the authority of certain issues and to reimburse the individuals appointed for actual expenses incurred in performing their tasks;

(20) To select a site for the building of a state agricultural exposition and state fair center; and

(21) To sell, upon obtaining a license from the Department of Revenue, alcoholic beverages for consumption on the premises only upon property operated and controlled by the authority. (Code 1981, § 12-3-474, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 2001, p. 4, § 12; Code 1981, § 2-3-5, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)



**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-474 as present Code Section 2-3-5.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2011, “this chapter” was substituted for “this part” in the middle of the first sentence of paragraph (5).

### **2-3-6. Public purpose of authority; tax and assessment exemptions.**

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. The State of Georgia covenants that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained, or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority; provided, however, in no event shall the exemptions granted in this Code section extend to any lessee or other private person or entity. (Code 1981, § 12-3-475, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-6, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-475 as present Code Section 2-3-6.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2011, “this chapter” was substituted for “this part” at the end of the first sentence.

### **2-3-7. Exercise of police powers by authority.**

The authority is authorized to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all zoning, use, and personal conduct restrictions upon the properties, facilities, and persons under its jurisdiction to the extent that such is lawful under the laws of the United States and this state. The authority may delegate all or any part of the performance of these functions temporarily or permanently to the state or to the county in which its facilities are located. (Code 1981, § 12-3-476, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1992, p. 6, § 12; Code 1981, § 2-3-7, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-476 as present Code Section 2-3-7.

### 2-3-8. Authorization for security force.

The authority is authorized to contract for or to provide for and maintain a security force with respect to the facilities and property owned, leased, operated, or under the control of the authority and within the territory thereof. The security force shall have the duty to protect persons and property, disperse unlawful or dangerous assemblages, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. For these purposes, a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a policeman or law enforcement officer of the county in which he is discharging his duties. (Code 1981, § 12-3-477, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-8, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-477 as present Code Section 2-3-8.

### 2-3-9. Receipts deemed trust funds.

All moneys received pursuant to the authority of this chapter, whether as grants or other contributions or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. (Code 1981, § 12-3-478, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-9, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-478 as present Code Section 2-3-9.

to Code Section 28-9-5, in 2011, “this chapter” was substituted for “this part” twice in this Code section.

**Code Commission notes.** — Pursuant

### 2-3-10. Setting rentals and other charges.

The authority is authorized to fix rentals and other charges which any user, exhibitor, concessionaire, franchisee, or vendor shall pay to the authority for the use of the project or part thereof or combination thereof, and to charge and collect the same, and to lease and make contracts with political subdivisions and agencies with respect to use of any part of the project. The rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or any part thereof so as to provide a fund sufficient with other revenues of such project, if any, to pay the cost of maintaining, repairing, and operating the project, including the reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project for water, light, sewer, and other services

furnished by other facilities at the project. (Code 1981, § 12-3-479, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-10, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-479 as present Code Section 2-3-10.

### **2-3-11. Legal services of Attorney General.**

The Attorney General shall provide legal services for the authority and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable. (Code 1981, § 12-3-480, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-11, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-480 as present Code Section 2-3-11.

### **2-3-12. Venue and jurisdiction for actions under chapter or against authority.**

Any action to protect or enforce any rights under this chapter shall be brought in the Superior Court of Houston County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Furthermore, the venue for actions brought against the authority shall be in the Superior Court of Houston County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Nothing contained in this chapter shall be construed to impair any rights afforded the state under the Constitution of the United States. (Code 1981, § 12-3-481, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1994, p. 590, § 1; Code 1981, § 2-3-12, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-481 as present Code Section 2-3-12.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2011, “this chapter” was substituted for “this part” in the first and last sentences of this Code section.

### **2-3-13. Conflict of interest; full disclosure.**

(a) Every member of the authority and every employee of the authority who knowingly has any interest, direct or indirect, in any contract to which the authority is or is about to become a party, or in any other business of the authority, or in any firm or corporation doing business with the authority shall make full disclosure of such interest to the authority. Failure to disclose such an interest shall constitute cause for which a member of the authority may be removed or an



employee discharged or otherwise disciplined at the discretion of the authority.

(b) The provisions of Article 1 of Chapter 10 of Title 16 and Code Sections 16-10-21, 16-10-22, 16-10-92, and 16-10-93, regulating the conduct of officers, employees, and agents of political subdivisions, municipal and other public corporations, and other public organizations, shall be applicable to the conduct of members, officers, employees, and agents of the authority.

(c) Any contract or transaction of the authority involving a conflict of interest which is not disclosed under subsection (a) of this Code section, or involving a violation of Article 1 of Chapter 10 of Title 16 or Code Section 16-10-21, 16-10-22, 16-10-92, or 16-10-93, or involving a violation of any other provision of law regulating conflicts of interest which is applicable to the authority or its members, officers, or employees shall be voidable by the authority. (Code 1981, § 12-3-482, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-13, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-482 as present Code Section 2-3-13.

## **2-3-14. Power of authority to issue revenue bonds.**

(a) The authority or any authority or body which may succeed to the powers, duties, and liabilities vested in the authority is authorized at one time, or from time to time, to provide by resolution for the issuance of revenue bonds for the purpose of paying all or any part of the cost, as defined in this chapter, of any one project or a combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in subsection (n) of this Code section for such payment. The bonds of each issue shall be dated and shall mature at such times and bear interest at such rates as may be determined by the authority, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds.

(b) The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company inside or outside the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(c) In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman or vice chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary or assistant secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman or vice chairman of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office.

(d) All revenue bonds issued under this chapter shall have and are declared to have all the qualities and incidents of negotiable instruments. Such bonds and the income therefrom shall be exempt from all taxation within the state.

(e) The authority may sell bonds in such manner and for such price as it may determine to be for the best interests of the authority.

(f) The proceeds of bonds shall be used solely for the payment of the cost of the project and shall be disbursed upon requisition or order of the chairman or vice chairman of the authority under such restrictions, if any, as provided by the resolution authorizing the issuance of the bonds or by the trust indenture mentioned in subsection (k) of this Code section.

(g) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(h) The authority may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

(i) Revenue bonds may be issued without the conducting of any proceedings, the existence of any conditions, or the happening of any events other than those proceedings, conditions, and events which are specified or required by this chapter. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this chapter shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members.

(j) Revenue bonds issued under this chapter shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state. Such bonds shall be payable solely from the fund provided for in subsections (m) through (p) of this Code section, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their faces covering substantially the foregoing provisions of this Code section. Anything in this Code section to the contrary notwithstanding, such funds as may be received from state appropriations or from any other source are declared to be available and may be used by any department, board, commission, or agency of the State of Georgia for the performance of any lease contract entered into by such department, board, commission, or agency with the authority.

(k)(1) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority.

(2) Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property, the construction of the project, the maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. The resolution or indenture may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(3) The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing provisions of this Code section, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.



(4) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority.

(5) All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project and of the cost of the project affected by such indenture.

(l) The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(m) Unless otherwise pledged and allocated, any and all revenues, rents, and earnings received by the authority, regardless of whether or not such revenues, rents, and earnings were produced by a particular project for which bonds have been issued, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the trust indenture or the resolution authorizing the issuance of the bonds may provide.

(n) Such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund which shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(o) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another.

(p) Subject to the provisions of the resolution authorizing the issuance of the bonds, or subject to the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of

bonds, and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued.

(q) Except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of bonds or by a trust indenture, any holder of revenue bonds or interest coupons issued under this chapter, any receiver for such holders, or any indenture trustee, if any, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this chapter or under such resolution or trust indenture. Such holder, receiver, or trustee may enforce and compel performance of all duties required by this chapter, or by resolution or trust indenture, to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, such holder, receiver, or trustee shall be subrogated to each and every right which the authority may possess and, in the pursuit of his or its remedies as subrogee, may proceed either at law or in equity, by action, mandamus, or other proceedings to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such holder, receiver, or trustee is representative. No holder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state.

(r) The authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this chapter and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities, and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

(s) While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority, or of its officers, employees, or agents, or of any department, board, commission, or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. This chapter shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under this chapter, shall constitute a contract with the holders of such bonds.

(t) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, division, subdivision, instrumentality, or agency of the State of Georgia which, or any person who, has contracted with the Georgia Agricultural Exposition Authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated. Such authority, division, subdivision, instrumentality, agency, or person shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and against any authority, division, subdivision, instrumentality, department, agency, or person contracting with the authority.

(u) No bonds shall be issued by the authority under this chapter unless the issuance of such bonds has been reviewed and approved by the Georgia State Financing and Investment Commission.

(v) The bonds authorized by this chapter are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized. (Code 1981, § 12-3-483, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1996, p. 6, § 12; Code 1981, § 2-3-14, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-483 as present Code Section 2-3-14.

**Code Commission notes.** — Pursuant

to Code Section 28-9-5, in 2011, “chapter” was substituted for “part” throughout this Code section.



2-3-15. Authorization for department construction and acquisition of projects.

The Department of Agriculture is authorized to construct, erect, acquire, and own the project, as defined in this chapter. The costs of any such project may be paid from the proceeds of state general obligation or guaranteed revenue debt. The department is authorized to contract with the authority, the State Properties Commission, the Georgia State Financing and Investment Commission, or with any other department, agency, commission, board, official, or person for the construction, operation, maintenance, funding, design, or use of such project. (Code 1981, § 12-3-484, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 2011, p. 261, § 3/HB 125; Code 1981, § 2-3-15, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.)

**The 2011 amendment**, effective July 1, 2011, redesignated former Code Section 12-3-484 as present Code Section 2-3-15 and substituted “Department of Agriculture” for “Department of Natural Resources” in the first sentence of this Code section.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, “this chapter” was substituted for “this part” at the end of the first sentence.

CHAPTER 4

GEORGIA SEED DEVELOPMENT COMMISSION

Sec.		Sec.	
2-4-3.	Seed Development Commission — Composition; officers; bylaws; quorum; compensation; records; audit; bonds.	2-4-8.	Terms of office of appointive members of commission and board.
2-4-7.	Advisory board created; members; function.		

2-4-3. Seed Development Commission — Composition; officers; bylaws; quorum; compensation; records; audit; bonds.

- (a) The commission shall be composed of the following 11 members:
- (1) Two members to be appointed by the Governor, each of whom shall be a farmer who grows crops or turf;
  - (2) One member who shall be a farmer who grows crops or turf, to be appointed by the Lieutenant Governor;
  - (3) One member who shall be a farmer who grows crops or turf, to be appointed by the Speaker of the House of Representatives;

(4) The Commissioner of Agriculture;

(5) Two representatives of the seed or turf industries or farm related organizations, one of whom shall be appointed by the Senate Agriculture and Consumer Affairs Committee, and one of whom shall be appointed by the House Committee on Agriculture and Consumer Affairs. Each committee shall make its appointment with a quorum present and a majority of those present concurring;

(6) One member who shall be a farmer who grows crops or turf, to be appointed by the Commissioner of Agriculture;

(7) The dean of the College of Agricultural and Environmental Sciences of the University of Georgia;

(8) A seed breeder employed by the College of Agricultural and Environmental Sciences of the University of Georgia, to be appointed by the dean of the College of Agricultural and Environmental Sciences of the University of Georgia; and

(9) The associate dean for research of the College of Agricultural and Environmental Sciences of the University of Georgia.

(b) The members of the commission shall enter upon their duties without further act or formality. The commission shall organize each even-numbered year at the meeting next following July 1 of such year, at which time the commission shall elect one of its members as chairperson and another as vice chairperson. It shall also elect a secretary and a treasurer, who need not be members. The offices of secretary and treasurer may be combined in one person. The commission may make such bylaws for its government as it deems necessary but is under no duty to do so.

(c) Six members of the commission shall constitute a quorum necessary for the transaction of business, and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted the commission by this chapter. No vacancy on the commission shall impair the right of a quorum to transact any and all business of the commission.

(d) The members shall not receive compensation for their services but shall be reimbursed for actual expenses incurred in the performance of their duties.

(e) Members of the commission shall be accountable as trustees. They shall cause adequate books and records of all transactions of the commission, including records of income and disbursements of every nature, to be kept. The books and records shall be inspected and audited by the state auditor at least once in each year. The commission may require that an employee, an officer, member of the commission, or

any person doing business with the commission post a bond, in an amount to be determined by the commission, for the faithful performance of the duties imposed upon such employee, officer, member of the commission, or person doing business with the commission. The principal of such bond of an officer, employee, or member of the commission shall be paid by the commission. (Ga. L. 1959, p. 83, § 3; Ga. L. 1980, p. 348, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1995, p. 10, § 2; Ga. L. 2008, p. 309, § 1/SB 515.)

**The 2008 amendment**, effective July 1, 2008, rewrote subsection (a); and, in subsection (b), in the second sentence, inserted “organize each even-numbered year at the meeting next following July 1 of such year, at which time the commission shall” near the beginning, substituted

“chairperson and another as vice chairperson” for “chairman and another as vice-chairman” at the end, and in the last sentence, substituted “it deems necessary” for “deemed necessary” in the middle.

#### **2-4-7. Advisory board created; members; function.**

The commission may appoint an advisory board, consisting of such number and qualifications of members as the commission may determine, to advise and consult with the commission in the performance of the commission’s duties. The function of such a board shall be advisory only. (Ga. L. 1959, p. 83, § 4; Ga. L. 1995, p. 10, § 2; Ga. L. 2008, p. 309, § 2/SB 515.)

**The 2008 amendment**, effective July 1, 2008, rewrote this Code section.

#### **2-4-8. Terms of office of appointive members of commission and board.**

The appointive members of the commission shall serve for terms of two years each commencing on July 1 of each even-numbered year; and the appointive members of the advisory board, if any, shall serve at the pleasure of the commission. (Ga. L. 1960, p. 1106, § 1; Ga. L. 2008, p. 309, § 3/SB 515.)

**The 2008 amendment**, effective July 1, 2008, inserted “shall serve for terms of two years each commencing on July 1 of each even-numbered year;” near the be-

ginning; inserted “, if any,” near the middle; and substituted “commission” for “appointing officer or entity” at the end.



CHAPTER 5

REGISTRATION, LICENSES, AND PERMITS  
GENERALLY

Sec.  
2-5-8. Rules and regulations.

2-5-8. Rules and regulations.

The Commissioner shall make and publish in print or electronically such rules and regulations, not inconsistent with law, as he deems necessary to carry out the purposes of this chapter. (Ga. L. 1966, p. 307, § 7; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in this Code section.

CHAPTER 6

SOIL AND WATER CONSERVATION

Article 2		Sec.	
Soil and Water Conservation Districts			
Sec.			
2-6-24.	State Soil and Water Conservation Commission — Chairperson; quorum; compensation; surety bonds; records; audits.	2-6-31.	District supervisors — Chairman; terms of office of elected supervisors; filling vacancies; quorum; compensation and expenses.
2-6-27.	State Soil and Water Conservation Commission — Additional duties and powers.	2-6-52.	Creation of Agricultural Water Conservation Incentive Program; purpose; participation; funding.
2-6-28.	Number and boundaries of soil and water conservation dis-		

Cross references. — Tax credit for donation of real property to be used for conservation purposes, § 48-7-29.12.

## ARTICLE 2

## SOIL AND WATER CONSERVATION DISTRICTS

**2-6-24. State Soil and Water Conservation Commission — Chairperson; quorum; compensation; surety bonds; records; audits.**

The commission shall designate one of its members as chairperson and may, from time to time, change such designation. A member of the commission shall hold office so long as he or she retains the office by virtue of which he or she is serving on the commission. A majority of the commission shall constitute a quorum, and the concurrence of a majority shall be required for the determination of any matter within its duties. The members of the commission shall receive for each day of actual attendance of meetings of the commission a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 and shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the commission. The commission shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property. It shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted and shall provide for an annual audit of the accounts of receipts and disbursements. (Ga. L. 1937, p. 377, § 4; Ga. L. 1988, p. 269, § 3; Ga. L. 2002, p. 951, § 1.)

**The 2002 amendment**, effective July 1, 2002, substituted “chairperson” for “chairman” in the first sentence; inserted “or she” twice in the second sentence; inserted a comma in the third sentence; and substituted “for each day of actual

attendance of meetings of the commission a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 and” for “no compensation for their services on the commission but” in the middle of the fourth sentence.

**2-6-27. State Soil and Water Conservation Commission — Additional duties and powers.**

In addition to the duties and powers otherwise conferred upon the commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of the soil and water conservation districts in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the districts informed of the activities and experiences of all the other districts and to facilitate an interchange of advice, experience, and cooperation between such districts;

(3) To coordinate the programs of the districts so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies and of the agencies and counties of this state in the work of such districts;

(5) To disseminate information throughout this state concerning the activities and programs of the districts and to encourage the formation of such districts in areas where their organization is desirable;

(6) To receive gifts, appropriations, materials, equipment, land, and facilities and to manage, operate, and disperse the same;

(7) To formulate such rules and regulations, to exercise such powers, and to perform such duties as are necessary to implement the administration of the federal Watershed Protection and Flood Prevention Act;

(7.1) To formulate such rules and regulations in consultation with the Environmental Protection Division of the Department of Natural Resources, to exercise such powers, and to perform such duties as are necessary to implement the administration of the education and training program established under Code Section 12-7-19;

(7.2) To formulate such rules and regulations and to exercise such powers as are necessary to perform its duties under subsection (m.1) of Code Section 12-5-31 and subsection (b.1) of Code Section 12-5-105;

(8) To enter into contracts and agreements with the districts, municipalities, and counties of this state, other agencies of this state, the United States and any agencies thereof, any association, any landowner or land occupier, or any person in order to carry out the purposes of this article; and

(9) To receive grants from any agency of the United States government or any agency of this state, and to make grants to districts, municipalities, or counties in this state, or other state agencies in order to:

(A) Fund up to 20 percent of the cost of obtaining permits for and constructing improvements to any dam that was originally constructed or financially assisted by the Natural Resources Conservation Service, formerly known as the Soil Conservation Service, of the United States Department of Agriculture;

(B) Fund up to 40 percent of the cost of obtaining a permit under Section 404 of the federal Clean Water Act, 33 U.S.C. Section 1344, for the construction of any new public water supply reservoir. In awarding any grants under this subparagraph, the commission



shall consider “regional effects and water supply yield of the proposed reservoir, anticipated population growth, and local government funding commitment; or

(C) Carry out other purposes of this article. (Ga. L. 1937, p. 377, § 4; Ga. L. 1949, p. 584, § 2; Ga. L. 1955, p. 257, § 1; Ga. L. 1962, p. 116, § 3; Ga. L. 1988, p. 269, § 6; Ga. L. 1988, p. 1336, § 1; Ga. L. 2003, p. 224, § 1; Ga. L. 2003, p. 813, § 1; Ga. L. 2008, p. 644, § 1-2/SB 342.)

**The 2003 amendments.** — The first 2003 amendment, effective July 1, 2003, added paragraph (7.1). The second 2003 amendment, effective July 1, 2003, added paragraph (7.1).

**The 2008 amendment,** effective July 1, 2008, at the end of paragraph (9), substituted a semicolon for “carry out the” at the end of the introductory paragraph; added subparagraphs (9)(A) and (9)(B); designated subparagraph (9)(C); and added “Carry out other” at the beginning of subparagraph (9)(C).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2003, paragraph (7.1), as enacted by Ga. L. 2003, p. 813, was redesignated as paragraph (7.2).

**Editor’s notes.** — Ga. L. 2008, p. 644, § 1-1, not codified by the General Assembly, provides that: “This part shall be known and may be cited as the ‘Water Conservation and Drought Relief Act.’”

Ga. L. 2008, p. 644, § 5-1, not codified by the General Assembly, provides in part, that the amendment to this Code section shall apply to all applications pending on or after the effective date thereof. The effective date was July 1, 2008.

**Law reviews.** — For article on the 2004 amendment of this Code section, see 21 Ga. St. U. L. Rev. 1 (2004).

## **2-6-28. Number and boundaries of soil and water conservation districts; alteration of existing districts or formation of new districts.**

(a) The number and geographical boundaries of the several soil and water conservation districts shall remain as they existed on July 1, 1973, unless changed as provided in this Code section.

(b) If two-thirds of the supervisors within each of the affected districts, each of the governing authorities of each county within any affected district, and the State Soil and Water Conservation Commission agree to the alteration of any district or the formation of any new district, the alteration or formation may be effected if all such approvals are filed with the commission along with the description of the altered boundaries or the boundaries of the new districts. The alteration of existing districts or formation of new districts may not be effected so that the boundaries of any such district will traverse the boundaries of any regional commission within the district or districts. All of the property and assets of any altered district shall be distributed among the affected districts in accordance to the same ratio used in the distribution of state appropriated funds to the affected districts. (Ga. L. 1937, p. 377, § 5; Ga. L. 1973, p. 929, § 2; Ga. L. 1988, p. 269, § 7; Ga. L. 1989, p. 1317, § 6.1; Ga. L. 2008, p. 181, § 11/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commission” for “regional development center” in the second sentence of subsection (b).

**2-6-31. District supervisors — Chairman; terms of office of elected supervisors; filling vacancies; quorum; compensation and expenses.**

(a) The supervisors shall designate a chairman and from time to time may change such designation.

(b)(1) The term of office of each elected supervisor shall be four years, except as otherwise provided by paragraph (2) of this subsection. An elected supervisor shall hold office until his or her successor has been elected and has qualified. Successors to elected supervisors shall be elected at the general election immediately preceding the expiration of terms and shall take office the first day of January immediately following that election.

(2)(A) The terms of those persons elected as supervisors in 2003 and whose terms have not expired as of the date that implementation of this paragraph is permissible under the Voting Rights Act of 1965, as amended, shall expire on December 31, 2008.

(B) The terms of those persons elected as supervisors in 2004 and whose terms have not expired as of the date that implementation of this paragraph is permissible under the Voting Rights Act of 1965, as amended, shall expire on December 31, 2008.

(C) The terms of those persons elected as supervisors in 2005 shall expire on December 31, 2010.

(D) The terms of those persons elected as supervisors in 2006 shall expire on December 31, 2010.

(E) If any persons were elected as supervisors on or after January 1, 2007, but prior to the date that implementation of this paragraph is permissible under the Voting Rights Act of 1965, as amended, then the terms of such persons shall expire on December 31, 2012.

(c)(1) Any vacancy in the office an appointed supervisor shall be filled for the unexpired term. The selection of any person to fill an unexpired term of an appointed supervisor shall be made in the same manner in which the original appointment was made.

(2) Any vacancy occurring in the office of an elected supervisor shall be filled as follows:

(A) If the vacancy occurs more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then such

vacancy shall be filled for the unexpired term of office at a special election to be held on the same date as said general election preceding the general election at which a successor will be elected to a new full term of office; and in such case the Governor shall select a qualified person from among two persons nominated by the remaining supervisors of the district to fill the vacancy until the person elected at such special election takes office; and

(B) If the vacancy does not occur more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then the Governor shall select a qualified person from among two persons nominated by the remaining supervisors of the district to fill the vacancy for the unexpired term.

(d) A majority of the supervisors shall constitute a quorum; and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its determination.

(e) The commission is authorized to fix a per diem payment for supervisors; in addition thereto, such supervisors shall be entitled to the regular mileage allowances provided for state employees if such supervisors travel by private conveyance and to their actual travel expenses if they travel by public conveyance. (Ga. L. 1937, p. 377, § 7; Ga. L. 1951, p. 695, § 1; Ga. L. 1973, p. 929, § 3; Ga. L. 1988, p. 269, § 10; Ga. L. 2007, p. 276, § 1/SB 263.)

**The 2007 amendment**, effective May 18, 2007, redesignated former subsection (b) as present paragraph (b)(1), and, in paragraph (b)(1), inserted “, except as otherwise provided by paragraph (2) of this subsection” at the end of the first sentence, inserted “or her” in the middle of the second sentence, and added the third sentence; added paragraph (b)(2); redesignated former subsection (c) as present paragraph (c)(1), and, in paragraph (c)(1), substituted “Any vacancy in the office an appointed supervisor” for “Vacancies” at the beginning, rewrote the second sentence which read: “The selection of successors to fill an unexpired term or a full term shall be made in the same manner in which the retiring supervisors were selected.”, and added paragraph (c)(2).

**Editor’s notes.** — Ga. L. 2007, p. 276,

§ 2, not codified by the General Assembly, provides: “The Attorney General of Georgia shall cause this Act to be submitted for preclearance under the federal Voting Rights Act of 1965, as amended, and such submission shall be made to the United States Department of Justice or filed with the appropriate court no later than 45 days after the date on which this Act is approved by the Governor or becomes law without such approval. If as of June 30, 2008, implementation of this Act is not permissible under the Voting Rights Act of 1965, as amended, then as of such date this Act shall be void and shall stand repealed in its entirety.” The United States Department of Justice precleared the Act under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, on December 20, 2007.



**2-6-47. Discontinuance of district — Publication of referendum results; determination of feasibility of continuance.**

**RESEARCH REFERENCES**

**Am. Jur. Pleading and Practice** tice Forms, Initiative and Referendum, Forms. — 14 Am. Jur. Pleading and Prac- § 2.

**2-6-52. Creation of Agricultural Water Conservation Incentive Program; purpose; participation; funding.**

(a) There is created the Agricultural Water Conservation Incentive Program. The program shall be developed, implemented, and supervised by the State Soil and Water Conservation Commission.

(b) The purpose of the program shall be to provide incentives to agricultural producers to foster water conservation and enhance water quality.

(c) Participation in the program shall be voluntary.

(d) The program shall include all 159 counties and 40 soil and water conservation districts.

(e) Priority designations for inclusion in the program shall be under the authority of the State Soil and Water Conservation Commission.

(f) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local soil and water conservation district or the State Soil and Water Conservation Commission.

(g) Funding may be provided to assist practices including but not limited to diversions, filter strips, fencing along streams, field borders, alternative watering systems, critical area plantings, grassed waterways, terraces, surface-water retention structures, heavy-use areas, closures of farm animal manure lagoons, riparian buffers or equivalent controls, animal manure waste systems and application, manure stack houses and other manure-holding structures, irrigation system enhancements, and other projects that foster water conservation and enhance water quality.

(h) Priority designation for inclusion in this program for state funding shall be given to projects that foster water conservation and enhance water quality. To be eligible for cost share funds under this Code section, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality. (Code 1981, § 2-6-52, enacted by Ga. L. 2004, p. 341, § 1.)

**Effective date.** — This Code section became effective May 7, 2004.

CHAPTER 7

PLANT DISEASE, PEST CONTROL, AND PESTICIDES

Article 2		Sec.	
Control of Pesticides			
Sec.			
2-7-55.	Registration required; exceptions; contents of application; fees; renewal; special local needs.	2-7-102.	cations; issuance; fees; renewal. Grounds for denial, suspension, revocation, or modification of license, permit, or certification.
2-7-57.	Licensing of restricted use pesticide dealers required; application; fees; responsibility of dealer.	2-7-113.1.	Local regulation of pesticides prohibited; variances from rule or regulation of Commissioner of Agriculture.
2-7-66.	Disposition of funds [Repealed].		
2-7-71.	Judicial actions after stop sale, use, or removal order generally; injunctions; condemnation; disposition of condemned pesticide or device; costs and expenses.		
Article 3		Article 5	
Use and Application of Pesticides		Boll Weevil Eradication	
2-7-99.	Licensing requirements; appli-	2-7-152.	Definitions.
		2-7-156.	Assessment for suppression and eradication programs; conditions.
		2-7-156.1.	Assessment Advisory Committee created; composition; eligibility of members; duties [Repealed].
		2-7-158.	Penalties.

ARTICLE 2

CONTROL OF PESTICIDES

2-7-50. Short title.

**Law reviews.** — For annual survey of product liability law, see 58 Mercer L. Rev. 313 (2006).

2-7-55. Registration required; exceptions; contents of application; fees; renewal; special local needs.

(a) Every pesticide which is distributed in this state shall be registered with the Commissioner, subject to this article. Such registration shall be renewed annually prior to January 1, provided that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and if the

pesticide is used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under this article or if the pesticide is distributed under the provisions of an experimental use permit issued under Code Section 2-7-56; provided, further, that after all pesticides have been classified for "General Use" or "Restricted Use" as required by Section 3 of FIFRA, the Commissioner, by regulation, may require the registration of products on a multiple-year basis of two, three, four, or five years.

(b) The applicant for registration shall file a statement with the Commissioner which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(2) The name of the pesticide;

(3) Other necessary information required for completion of the department's application for registration form; and

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA.

(c) The Commissioner, when he deems it necessary in the administration of this article, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

(d) The Commissioner may require a full description of the tests made and the results thereof on which the claims are based on any pesticide not registered pursuant to Section 3 of FIFRA or on any pesticide on which restrictions are being considered. The Commissioner may refuse to consider data he required of the initial registrant of a pesticide use in support of any other application for registration of that same use, unless such subsequent applicant has first obtained written permission to use such data. If data from the original registrant is considered without such permission, the Commissioner shall promptly notify such initial registrant. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(e) The Commissioner may prescribe other necessary information by regulation.

(f) The applicant desiring to register a pesticide shall pay an annual registration fee to the Commissioner for each pesticide registered for such applicant. The amount of such fee shall be established by the Commissioner in an amount not less than \$100.00 nor more than



\$200.00 per annum. All such registrations shall expire on December 31 of any one year, provided that if the Commissioner adopts a multiple-year registration period, the annual registration fee per product shall be compounded for the number of years included in the multiple-year registration. A registration for a special local need pursuant to subsection (i) of this Code section which is disapproved by the administrator of the Environmental Protection Agency shall expire on the effective date of the administrator's disapproval. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(g) Any registration approved by the Commissioner and in effect on December 31 or, in case a multiple-year registration period is adopted, on the last day of the registration period, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until such time as the Commissioner notifies the applicant that the registration has been renewed or denied, in accordance with Code Section 2-7-59. Forms for reregistration shall be mailed to registrants at least 30 days prior to the due date.

(h) If the renewal of a pesticide registration is not filed prior to January 1 of any one year, or by the expiration date in the case of multiple-year registration, the applicable registration fee shall be doubled and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

(i) Provided the state is certified by the administrator of the Environmental Protection Agency to register pesticides for special local need pursuant to Section 24(c) of FIFRA, the Commissioner shall require the information set forth under subsections (b) through (e) of this Code section and, subject to the terms and conditions of that certification, shall register such pesticide if he determines that:

- (1) Its composition is such as to warrant the proposed claims for it;
- (2) Its labeling and other material required to be submitted comply with the requirements of this article;
- (3) It will perform its intended function without unreasonable adverse effects on the environment;
- (4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment;
- (5) The classification for general use or restricted use is in conformity with Section 3(d) of FIFRA; and
- (6) A special local need exists.

(j) The Commissioner shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides

meet the requirements of this Code section, one should not be registered in preference to the other. (Ga. L. 1950, p. 390, § 4; Ga. L. 1958, p. 389, § 1; Ga. L. 1976, p. 282, § 7; Ga. L. 2001, p. 900, § 1; Ga. L. 2010, p. 9, § 1-3/HB 1055.)

**The 2001 amendment**, effective July 1, 2001, in subsection (f), deleted “of \$10.00” following “annual registration fee” in two places and added the second sentence.

12, 2010, in subsection (f), substituted “less than \$100.00 nor more than \$200.00” for “to exceed \$100.00” near the end of the second sentence and added the last sentence.

**The 2010 amendment**, effective May

## **2-7-57. Licensing of restricted use pesticide dealers required; application; fees; responsibility of dealer.**

(a) It shall be unlawful for any person to act in the capacity of a restricted use pesticide dealer, as defined by this article, or to advertise as or assume to act as a restricted use pesticide dealer at any time, without first having obtained an annual license from the Commissioner, which license shall expire on December 31 of each year. A license shall be required for each location or outlet located within this state from which restricted use pesticides or pesticides with state restricted uses are distributed, provided that any manufacturer, registrant, or distributor who has no pesticide dealer outlet within this state and who distributes such pesticides directly into this state shall obtain a restricted use pesticide dealer license for his principal out-of-state location or outlet.

(b) Application for a license shall be accompanied by a \$55.00 annual license fee, shall be on a form prescribed by the Commissioner, and shall include the full name of the person applying for such license. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of the outlet to be licensed, the principal business address of the applicant, and any other necessary information prescribed by the Commissioner. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(c) This Code section shall not apply to a licensed pesticide contractor who sells pesticides only as an integral part of his pesticide application service, when such pesticides are dispensed only through equipment used for such pesticide application, or to a federal, state, county, or municipal agency which provides pesticides only for its own programs.

(d) If an application for renewal of a restricted use pesticide dealer license is not filed on or prior to January 1 of any one year, an additional

fee of \$15.00 shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued.

(e) Each restricted use pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, or revocation, after a hearing, for any violation of this article or regulations issued hereunder, whether committed by the dealer or by the dealer's officer, agent, or employee. (Ga. L. 1976, p. 282, § 14; Ga. L. 2010, p. 9, § 1-4/HB 1055.)

**The 2010 amendment,** effective May 12, 2010, in subsection (b), substituted “\$55.00” for “\$15.00” in the first sentence and added the last sentence.

## 2-7-62. Prohibited acts; exemptions.

### JUDICIAL DECISIONS

**Mixing chemicals inconsistently with label is jury question.** — Upon a claim that a pesticide company violated O.C.G.A. § 2-7-62(b)(3), given the multiple instructions included on the pesticide label, particularly that portion suggesting that the preparer reverse the order of the added components, the trial court properly concluded that the issue of whether the chemical was mixed in a manner in-

consistent with its label was a jury question. Moreover, even if the company violated § 2-7-62(b)(3), it did not entitle the plaintiff to judgment as a matter of law, as it would improperly remove the issue of proximate cause from the jury. *Chancey v. Peachtree Pest Control Co.*, 288 Ga. App. 767, 655 S.E.2d 228 (2007), cert. denied, No. S08C0642, 2008 Ga. LEXIS 459 (Ga. 2008).

## 2-7-66. Disposition of funds.

Reserved. Repealed by Ga. L. 2010, p. 9, § 1-4.1, effective May 12, 2010.

**Editor's notes.** — This Code section was based on Ga. L. 1976, p. 282, § 23.

## 2-7-68. Designation of trade secrets by applicant; protection from public disclosure; notification of proposed release; declaratory judgment.

### RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Abandonment of Trade Secret, 41 POF2d 517.



**2-7-71. Judicial actions after stop sale, use, or removal order generally; injunctions; condemnation; disposition of condemned pesticide or device; costs and expenses.**

(a) After service of a stop sale, use, or removal order is made upon any person, either that person, the registrant, or the Commissioner may file an action in a court of competent jurisdiction in the appropriate county for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions, mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this article or regulations adopted hereunder.

(b) If the pesticide or device is condemned, after entry of decree it shall be disposed of by destruction or sale as the court directs; and if such pesticide or device is sold, the proceeds, less costs, including legal costs, shall be retained pursuant to the provisions of Code Section 45-12-92.1, provided that the pesticide or device shall not be sold contrary to this article or regulations adopted hereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing, removal from the state, or otherwise bringing the product into compliance.

(c) When a decree of condemnation is entered against a pesticide or device, court costs, fees, storage, and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide. (Ga. L. 1950, p. 390, § 11; Ga. L. 1976, p. 282, § 13; Ga. L. 2010, p. 9, § 1-4.2/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, substituted “retained pursuant to the provisions of Code Section 45-12-92.1” for “paid to the state treasury

as provided in Code Section 2-7-66” in the middle of the first sentence of subsection (b).

## ARTICLE 3

### USE AND APPLICATION OF PESTICIDES

**2-7-90. Short title.**

**Law reviews.** — For annual survey of product liability law, see 58 Mercer L. Rev. 313 (2006).

**2-7-97. Promulgation of rules and regulations authorized; notice and hearing; restricted use pesticide classifications and state restricted pesticide uses; declaration of pests; reports to Environmental Protection Agency.**

**RESEARCH REFERENCES**

**ALR.** — Validity, construction, and operation of state and municipal act or regulation requiring notice of pesticide and herbicide use, 18 ALR6th 793.

**2-7-99. Licensing requirements; applications; issuance; fees; renewal.**

**(a) Pesticide contractor's license.**

**(1) Required; additional requirement; fee.** No person shall engage in the business of contracting for the application of any pesticide to the lands of another within this state at any time without a pesticide contractor's license issued by the Commissioner for each business location. In addition to the pesticide contractor's license, each business location must maintain, in full-time employment during all periods of operation, at least one certified commercial pesticide applicator. The Commissioner shall require an annual fee of \$55.00 for each pesticide contractor's license issued. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

**(2) Application for license; form; content.** Application for a pesticide contractor's license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

(A) The full name of the person applying for the license;

(B) If the applicant is a person other than an individual, the full name of each member of the firm or partnership or the names of the principal officers of the association, corporation, or group;

(C) The principal business address of the applicant in this state and elsewhere;

(D) If applicable, the name and address of an attorney in fact pursuant to the requirements of Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act";

(E) The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and

(F) Any other necessary information prescribed by the Commissioner.

(3) **Issuance.** If the Commissioner finds the applicant qualified to engage in the business of contracting for the application of pesticides commercially, if the applicant files proof of financial responsibility as required under Code Section 2-7-103, and if the applicant applying for a license to contract for aerial application of pesticides has met all of the requirements of the Federal Aviation Administration and all aeronautic requirements of this state for operation of equipment described in the application, the Commissioner shall issue a pesticide contractor's license, with any necessary limitations; provided, however, commercial aerial applicators of crop protection products and pesticide contractors applying crop protection products to agricultural crops shall not be required to file proof of financial responsibility as required under Code Section 2-7-103. The license shall expire at the end of the calendar year of issue, unless it is revoked or suspended prior thereto by the Commissioner for cause.

(b) **Certified pesticide applicator licenses.**

(1) **Certified private applicator's license.**

(A) **Required; competency.** No individual shall purchase, use, or supervise the use of any pesticide as a private applicator unless he is licensed as a certified private applicator or is acting under the direct supervision of an individual who is licensed as a certified private applicator. The Commissioner shall require the applicant to demonstrate his competency to apply "restricted use pesticides" safely, effectively, and in such a manner as to prevent any unreasonable adverse effects on the environment. Such determination of competency shall be made on the basis of standards and procedures approved by the Environmental Protection Agency in the "Georgia Plan for Certification of Pesticide Applicators."

(B) **Application for license; form; content.** Application for a license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

- (i) The name of the person applying for the license;
- (ii) The complete home address and mailing address of the applicant; and
- (iii) Any other information pertinent to the applicant's operation.

(C) **Issuance.** If the Commissioner finds the applicant qualified to use or supervise the use of "restricted use pesticides" as a private pesticide applicator, he shall issue such license, to be effective for a specified period which shall be determined by the Commissioner by



regulation. There shall be no fee required for a certified private applicator's license.

**(2) Certified commercial pesticide applicator's license.**

**(A) Required; competency.** No individual shall purchase, use, or supervise the use of any pesticide as a commercial applicator unless he is licensed as a certified commercial applicator or is acting under the direct supervision of an individual who is licensed as a certified commercial applicator. No person shall commercially apply any pesticide by aerial equipment without a certified commercial pesticide applicator license. The Commissioner shall require the applicant to demonstrate his competency to apply pesticides safely, effectively, and without any unreasonable adverse effects on the environment. Such determination of competency shall be made on the basis of standards and procedures approved by the Environmental Protection Agency in the "Georgia Plan for Certification of Pesticide Applicators."

**(B) Application for license; form; content.** Application for a license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

- (i) The full name of the person applying for the license;
- (ii) The principal business address of the applicant in this state and elsewhere;
- (iii) If applicable, the name and address of an attorney in fact pursuant to the requirements of Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act"; and
- (iv) Any other necessary information prescribed by the Commissioner.

**(C) Issuance; fees; renewal.** If the Commissioner finds the applicant qualified to apply pesticides in the classification or classifications he or she has applied for, the Commissioner shall issue a certified commercial pesticide applicator's license. Effective August 21, 1980, all new certified commercial pesticide applicator licenses shall be issued for a period of five years from the date of certification. The fee for the five-year license shall be \$90.00. Licenses shall be subject to renewal on the day following expiration, based on such recertification requirements as the Commissioner may establish by regulation. (Ga. L. 1972, p. 849, § 7; Ga. L. 1976, p. 369, § 7; Ga. L. 1980, p. 749, §§ 1, 2; Ga. L. 1982, p. 3, § 2; Ga. L. 1990, p. 1253, § 1; Ga. L. 2010, p. 9, § 1-5/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in paragraph (a)(1), substituted "\$55.00" for "\$15.00" in the next to the last sentence and added the last sentence; and, in subparagraph (b)(2)(C), inserted "or she" in the first sentence, substituted "\$90.00" for "\$25.00" in the third sentence,

deleted ", provided that all such licenses previously issued on an annual basis and expiring December 31, 1980, shall be renewable January 1, 1981, for the remaining portion of their five-year certification period" from the end of the fourth sentence, and deleted the table of fees.

## **2-7-102. Grounds for denial, suspension, revocation, or modification of license, permit, or certification.**

(a) Any licensed or unlicensed person shall be subject to prosecution or civil injunctive action for committing any of the following acts, each of which is declared unlawful; and additionally, if an applicant or the holder of any license, permit, or certification is found by the Commissioner to have committed any of the following acts, or is subject to a final order imposing a civil penalty pursuant to Section 14 of FIFRA, the Commissioner may suspend any such license, permit, or certification, pending inquiry, for not longer than ten days, and, after opportunity for a hearing, may deny, suspend, or revoke such license, permit, or certification, or modify any provision thereof:

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Made a pesticide recommendation or use inconsistent with the labeling, the Environmental Protection Agency or Georgia state registration for that pesticide, or in violation of the Environmental Protection Agency or Georgia state restrictions on the use of that pesticide;

(3) Applied known ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;

(5) Operated in a faulty, careless, or negligent manner;

(6) Neglected or, after notice, refused to comply with this article or the rules adopted hereunder;

(7) Refused or neglected to keep and maintain the records required by this article or to make reports when and as required;

(8) Made false or fraudulent records, invoices, or reports;

(9) Contracted to apply any pesticide to the lands of another without a licensed commercial pesticide applicator in full-time employment;

(10) Used fraud or misrepresentation in making an application for or renewal of a license, permit, or certification;

(11) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this article, conspired with such a licensed or an unlicensed person to evade the provisions of this article, or allowed one's license, permit, or certification to be used by another person;

(13) Made false or misleading statements, during or after an inspection, concerning any infestation or infection of pests found on land;

(14) Impersonated any federal, state, county, or city inspector or official; or

(15) Acted in the capacity of, or advertised as, a pesticide contractor or applicator without the required license issued by the Commissioner.

(b) The Commissioner may suspend any pesticide contractor's license or any certified commercial pesticide applicator's license, pending inquiry, for not longer than ten days and, after opportunity for a hearing, may deny, suspend, or revoke such license for a period not to exceed five years upon a finding by the Commissioner that:

(1) The applicant for or holder of such a license has been convicted of or has pleaded guilty to a violation of Code Section 16-13-31;

(2) The conviction occurred or the plea was entered on or after January 1, 1984;

(3) The conviction occurred or the plea was entered within the immediately preceding five years; and

(4) An aircraft was used in the commission of such violation.

(c) The Commissioner may suspend any pesticide contractor's license or certified commercial pesticide applicator's license or refuse to grant or renew either license upon notice to the Commissioner by either a court of competent jurisdiction or the child support agency within the Department of Human Services that:

(1) The applicant for or holder of either such license is not in compliance with an order for child support as defined in Code Section 19-6-28.1 or 19-11-9.3; and

(2) The hearings and appeals procedures provided in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required under this article.

(d) The Commissioner shall suspend any pesticide contractor's license or certified commercial pesticide applicator's license or refuse to grant or renew either license upon notice to the Commissioner by the Georgia Higher Education Assistance Corporation that:



(1) The applicant for or holder of either such license is a borrower in default who is not in satisfactory repayment status as defined in Code Section 20-3-295; and

(2) The hearings and appeals procedures provided in Code Section 20-3-295, where applicable, shall be the only such procedures required under this article. (Ga. L. 1972, p. 849, § 9; Ga. L. 1976, p. 369, § 11; Ga. L. 1982, p. 3, § 2; Ga. L. 1984, p. 890, § 1; Ga. L. 1985, p. 149, § 2; Ga. L. 1996, p. 453, § 1; Ga. L. 1997, p. 143, § 2; Ga. L. 1998, p. 1094, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in the introductory language of subsection (c).

### **2-7-113.1. Local regulation of pesticides prohibited; variances from rule or regulation of Commissioner of Agriculture.**

(a) No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution relating to pesticide use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture. This provision shall in no way prohibit or impair the legal right of any county, municipal corporation, consolidated government, or other political subdivision of this state to issue business licenses or to make zoning decisions.

(b) The governing authority of any county or municipality may, by resolution, petition the Commissioner of Agriculture for a variance from a rule or regulation of the Commissioner because of special circumstances relating to the use or application of a pesticide. If such a petition is received by the Commissioner, it shall be the duty of the Commissioner to notify the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the Agriculture and Consumer Affairs Committee and Natural Resources and the Environment Committee of the Senate and the Agriculture and Consumer Affairs Committee and the Natural Resources and Environment Committee of the House of Representatives that such petition has been received. The Commissioner shall conduct a public hearing on such petition and issue a decision on the requested variance within 60 days of the receipt of the petition. If a decision is not given within 60 days of the receipt of the petition, the variance shall automatically be granted. The Commissioner may grant a variance requested under this subsection with or without changes. (Code 1981, § 2-7-113.1, enacted by Ga. L. 1992, p. 3162, § 1; Ga. L. 2009, p. 303, § 2/HB 117; Ga. L. 2011, p. 752, § 2/HB 142.)

**The 2009 amendment**, effective April, 30, 2009, in the middle of the second sentence of subsection (b), substituted “chairpersons of the Agriculture and Consumer Affairs” for “chairmen of the Agriculture” and inserted “and the Environment”. For intent, see the Editor’s note.

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “the” preceding “Environment Committee of the House of Representatives” in the second sentence of subsection (b).

**Editor’s notes.** — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

## ARTICLE 5

### BOLL WEEVIL ERADICATION

#### 2-7-152. Definitions.

As used in this article, the term:

(1) “Bale” means a running bale of cotton averaging 500 pounds.

(1.1) “Boll weevil” means *Anthonomus grandis* Boheman in any stage of development.

(2) “Certificate” means a document issued by the Commissioner certifying that a regulated article is free of the boll weevil.

(3) “Commissioner” means the Commissioner of Agriculture, any employee of the Department of Agriculture, or any other person authorized by the Commissioner to act in his or her behalf.

(4) “Department” means the Georgia Department of Agriculture.

(4.1) “First handler” means that person who owns or operates the gin where cotton is first delivered from the cotton grower.

(5) “Host” means any plant, plant part, or product thereof, including cotton, which is capable of sustaining the boll weevil in the completion of any portion of its life cycle.

(6) “Infested” means actually infested with the boll weevil or exposed to such an extent that it would be reasonable to expect that an infestation exists.

(7) “Noncommercial cotton” means cotton intended for purposes other than processing.

(8) “Permit” means a document issued or authorized by the Commissioner providing for the movement of regulated articles to restricted destinations for limited handling, use, or processing.

(9) "Person" means an individual, corporation, company, society, association, or other business entity.

(10) "Regulated article" means any article carrying or capable of carrying the boll weevil, including, but not limited to, cotton plants, seed cotton, hosts, gin trash, and equipment which may be designated by the Commissioner. (Code 1981, § 2-7-152, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1998, p. 1123, § 1; Ga. L. 2009, p. 439, § 1/SB 43.)

**The 2009 amendment**, effective July 1, 2009, in paragraph (4.1), substituted "handler" for "buyer" near the beginning and substituted "owns or operates the gin where cotton is first delivered" for "first buys cotton" near the middle.

## **2-7-156. Assessment for suppression and eradication programs; conditions.**

An assessment shall be levied upon all cotton growers in this state to cover, in whole or in part, the cost of boll weevil suppression and eradication programs authorized by this article, subject to the following:

(1) All assessments imposed on cotton shall be levied on a per acre or per bale basis as determined by the Commissioner upon recommendation of the cotton growers' organization; provided, however, that the per acre assessment shall continue to be used so long as acreage certification is available to the department;

(2) The per acre or per bale assessment, the period for which it shall be levied, and the geographical area to which the assessment applies shall be established by the Commissioner, upon recommendation by the board of directors of the cotton growers' organization;

(3) When the assessment is imposed on a per bale basis, it shall be the duty of each first handler of cotton from cotton growers in this state to collect the assessments imposed pursuant to this article on such cotton, to file reports on forms prescribed by the Commissioner listing such sales and the name of the grower, and to remit the amounts so imposed and collected to the Commissioner within 30 days of the date of purchase of the cotton;

(4) The Commissioner of Agriculture is authorized, and it shall be the Commissioner's duty, to receive, collect, hold in trust, and disburse all assessments and any other funds created under this article as trust funds of the cotton growers' organization, without complying with the requirements applicable to funds collected for the use and benefit of the state. Such funds shall not be required to be deposited in the state treasury and appropriated therefrom. All moneys collected by the Commissioner shall be deposited in a bank or



other depository approved by the growers' organization and shall be disbursed by the Commissioner only upon the written authorization of the certified cotton growers' organization for the administration and implementation of the boll weevil eradication program. Should the eradication program be discontinued or certification of the growers' organization be revoked by the Commissioner, the assessments authorized by this article shall be discontinued on the date specified by the Commissioner and any funds remaining in its hands at such time are authorized to be paid out by the Commissioner for existing obligations and for winding up the affairs of the certified cotton growers' organization. Any funds remaining over and above those required for completing the business of the cotton growers' organization shall be paid by the Commissioner to the contributing growers on a pro rata basis;

(5) Records maintained by the Commissioner on behalf of the certified cotton growers' organization shall be audited at least annually by the state auditor;

(6) The Commissioner shall have a lien for the payment of assessments under this article which shall be of equal dignity with liens for taxes in favor of the state. The Commissioner is authorized to issue executions for the collection of such assessments in like manner as executions are issued for ad valorem property taxes due the state. It shall be the duty of each and every sheriff of this state and their lawful deputies, upon request of the Commissioner, to levy and collect such executions and to make their return thereof to the Commissioner in like manner as such tax executions are levied and return thereof made to county tax collectors and tax commissioners; provided, however, that the Commissioner shall be authorized to levy and collect his or her own executions;

(7) In addition to the lien provided in paragraph (6) of this Code section, the Commissioner shall have a special lien on cotton for payment of assessments which shall be superior to any other lien provided by law, shall arise as of the time the assessments become due and payable, and shall cover all cotton grown by or ginned from the cotton grower from the date the lien arises until such assessments are paid; provided, however, that any buyers of cotton shall take free of such lien if such buyer has not received written notice of the lien from the Commissioner. Such lien extends to the proceeds of sale received by the person who originally bought the cotton from the grower. Notice may be provided by tagging the cotton as being subject to a delinquency or by documentation in the sales agreement indicating that the cotton is subject to a delinquency. The Commissioner or the Commissioner's authorized representative is authorized and empowered to so tag the cotton wherever found. In order to enforce

such liens, the Commissioner is authorized to issue an execution for the collection of delinquent assessments due the Commissioner. The execution shall be directed to all and singular sheriffs of this state and shall command them to levy upon the cotton of the cotton grower or notified initial buyer; provided, however, that the Commissioner shall be authorized to levy and collect his or her own executions. Each sheriff or the Commissioner or the Commissioner's authorized representative shall execute the execution as in cases of writs of execution from the superior courts. The Commissioner or the Commissioner's authorized representative may levy and conduct judicial sales in the manner provided by law for sales by sheriffs and constables. The special lien on cotton may also be enforced by a foreclosure action or action at law, as appropriate, brought by the Commissioner in the superior court of the county of residence of the person who originally bought the cotton from the grower. A buyer of cotton other than a person buying cotton from the grower takes free of the lien created by this paragraph. (Code 1981, § 2-7-156, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1986, p. 1086, § 2; Ga. L. 1990, p. 5, § 1; Ga. L. 1991, p. 452, § 2; Ga. L. 1998, p. 1123, § 2; Ga. L. 2009, p. 439, § 2/SB 43.)

**The 2009 amendment**, effective July 1, 2009, in paragraph (3), substituted "first handler of cotton from cotton growers" for "person who first purchases cotton

from a cotton grower" near the beginning and, in paragraph (7), inserted "or ginned from" near the middle of the first sentence.

### **2-7-156.1. Assessment Advisory Committee created; composition; eligibility of members; duties.**

Repealed by Ga. L. 1998, p. 1123, § 3, effective March 24, 2010.

**Editor's notes.** — This Code section was based on Code 1981, § 2-7-156.1, enacted by Ga. L. 1998, p. 1123, § 3.

### **2-7-158. Penalties.**

(a) Any person violating any provision of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$50.00 nor more than \$1,000.00 or by imprisonment not exceeding 12 months, or both, as determined by the court.

(b) Any cotton grower or the first handler of cotton from a cotton grower who fails to pay any assessment levied under this article when due and upon reasonable notice shall be subject to a penalty of not more than \$25.00 per acre or \$12.50 per bale, such amount to be established by the Commissioner upon recommendation of the board of directors of the cotton growers' organization.

(c) Any cotton grower who fails to pay all assessments, including penalties, within 30 days from the date of notice shall be required to destroy all cotton plants growing on his or her property which are subject to assessment. Any plants not destroyed shall be deemed to be a public nuisance. In such case, the Commissioner is authorized to apply to any court of competent jurisdiction and such court shall issue judgment and order condemnation and destruction of such nuisance. The grower shall be liable for all court costs, fees, and other expenses incurred in such action. (Code 1981, § 2-7-158, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1991, p. 452, § 3; Ga. L. 1998, p. 1123, § 4; Ga. L. 2009, p. 439, § 3/SB 43.)

The 2009 amendment, effective July 1, 2009, substituted “handler” for “buyer” near the beginning of subsection (b).

CHAPTER 8

AGRICULTURAL COMMODITIES PROMOTION

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Promotion of Agricultural Commodities			federation or organization members; acceptance of donations; voting; termination.
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Sec.		Sec.	
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2-8-122.	Commissioner's authority.		
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## ARTICLE 1A

### PROMOTION OF AGRICULTURAL COMMODITIES

**Effective date.** — This article became effective May 1, 2009.

#### 2-8-5. Definitions.

(a) As used in this Code section, the term:

(1) "Agricultural commodities" means any and all agricultural, horticultural, floricultural, and vegetable products produced in this state or any class, variety, or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor, and shall include any one, any combination thereof, or all of the agricultural products, livestock and livestock products, poultry and poultry products, timber and timber products, fish and seafood, and the products of the farms and forests of this state.

(2) "Processor" has the meaning provided by Code Section 2-8-11.

(3) "Producer" has the meaning provided by Code Section 2-8-11.

(b) The Commissioner shall be authorized to take all actions necessary and appropriate to create, register, license, promote, and protect a trademark for use in connection with the general promotion of agricultural commodities as being Georgia grown. (Code 1981, § 2-8-5, enacted by Ga. L. 2009, p. 446, § 3/SB 152.)

## ARTICLE 2

### AGRICULTURAL COMMODITY COMMISSIONS GENERALLY

#### **2-8-10. Nonapplicability of article to Agricultural Commodity Commission for Peanuts, Agricultural Commodity Commission for Equines, or Agricultural Commodity Commission for Georgia Grown Products.**

This article shall not apply to the Agricultural Commodity Commission for Peanuts provided for in Article 3 of this chapter, except as provided in Code Section 2-8-13; nor shall this article apply to the Agricultural Commodity Commission for Equines provided for in Article 5 of this chapter; nor shall this article apply to the Agricultural Commodity Commission for Georgia Grown Products provided for in Article 4 of this chapter. (Code 1981, § 2-8-10, enacted by Ga. L. 1989, p. 1420, § 1; Ga. L. 2006, p. 632, § 1/SB 380; Ga. L. 2013, p. 74, § 2/HB 298.)

**The 2006 amendment**, effective January 1, 2007, added “; nor shall this article apply to the Agricultural Commodity Commission for Equines provided for in Article 4 of this chapter” to the end of this Code section.

**The 2013 amendment**, effective July 1, 2013, substituted “Article 5 of this chapter; nor shall this article apply to the Agricultural Commodity Commission for Georgia Grown Products provided for in Article 4 of this chapter” for “Article 4 of this chapter”.

**Editor’s notes.** — Ga. L. 2006, p. 632, § 2, not codified by the General Assembly, provides that the 2006 amendment became effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the November 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

#### **2-8-13. Commissions previously established are ratified and governed by chapter; contributions deemed voluntary; balloting to determine continued existence.**

(a)(1) Each of the following commissions heretofore established pursuant to the “Georgia Agricultural Commodities Promotion Act,” (Ga. L. 1961, p. 301), as amended, effective from the date set forth below opposite its name, is ratified and confirmed as a public corporation and instrumentality of the State of Georgia from and since such date:

(A) The Agricultural Commodity Commission for Milk established July 1, 1961;

(B) The Agricultural Commodity Commission for Eggs established July 1, 1961;

(C) The Agricultural Commodity Commission for Peanuts established August 1, 1961;

(D) The Agricultural Commodity Commission for Sweet Potatoes established August 1, 1961;

(E) The Agricultural Commodity Commission for Peaches established May 1, 1962;

(F) The Agricultural Commodity Commission for Tobacco established July 1, 1962;

(G) The Agricultural Commodity Commission for Apples established August 1, 1962; and

(H) The Agricultural Commodity Commission for Cotton established August 1, 1965.

(2) Each of the following entities that were formed de facto to act as commodity commissions upon presentation by the producers of the affected agricultural commodity of a list of nominees for appointment and on which ex officio members elected by the House Committee on Agriculture and Consumer Affairs and the Senate Agriculture and Consumer Affairs Committee served is ratified and confirmed as a public corporation and instrumentality of the State of Georgia from and since such date:

(A) The Agricultural Commodity Commission for Soybeans established September 1, 1971;

(B) The Agricultural Commodity Commission for Canola established June 24, 1994;

(C) The Agricultural Commodity Commission for Pecans established June 24, 1994;

(D) The Agricultural Commodity Commission for Corn established March 24, 1995; and

(E) The Agricultural Commodity Commission for Vegetables established June 19, 2006.

(3) There shall be an Agricultural Commodity Commission for Blueberries established on May 12, 2008.

(4) There shall be an Agricultural Commodity Commission for Ornamental Plants established on May 1, 2009. For purposes of this



paragraph, the term “ornamental plants” means any plants grown in commercial nurseries for sale as live plants for use primarily in ornamental or landscape plantings; such term shall not include turf production or plants grown in nurseries for other agricultural, horticultural, or silvicultural use.

(5) There shall be an Agricultural Commodity Commission for Beef established on April 17, 2013. For purposes of this paragraph, the term “beef” means any bovine animal.

(b)(1) All actions taken by each of the commissions enumerated in paragraph (1) of subsection (a) of this Code section prior to July 1, 1969, pursuant to terms of Ga. L. 1961, p. 301, as amended, are ratified; and all funds received by each of the commissions after the effective date shown opposite its name and prior to July 1, 1969, are determined to have been voluntarily contributed pursuant to subsection (h) of Code Section 2-8-14 and to constitute trust funds of such commission as provided in Code Section 2-8-17. Each of such commissions shall, from and after July 1, 1969, be organized and constituted, have corporate existence, and possess powers and duties as stated in this article and shall be governed and controlled by this article; provided, however, that any contract obligation or other undertaking entered into or incurred by or in behalf of any such commission prior to July 1, 1969, shall be valid and binding if authorized by Ga. L. 1961, p. 301, as amended.

(2) All actions taken by each of the commissions enumerated in paragraph (2) of subsection (a) of this Code section prior to May 11, 2007, pursuant to terms of Ga. L. 1969, p. 763, as amended, or this article are ratified; and all funds received by each of the commissions on or after the effective date shown opposite its name and prior to May 11, 2007, are determined to have been voluntarily contributed pursuant to subsection (h) of Code Section 2-8-14 and to constitute trust funds of such commission as provided in Code Section 2-8-17. Each of such commissions shall, from and after May 11, 2007, be organized and constituted, have corporate existence, and possess powers and duties as stated in this article and shall be governed and controlled by this article; provided, however, that any contract obligation or other undertaking entered into or incurred by or in behalf of any such commission prior to May 11, 2007, shall be valid and binding if authorized by Ga. L. 1969, p. 763, as amended, or this article.

(c)(1) Prior to April 30, 1971, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (1) of subsection (a) of this Code section shall continue to exist and operate under this article.

(2) Prior to April 30, 2009, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (2) of subsection (a) of this Code section shall continue to exist and operate under this article.

(3) Prior to April 30, 2010, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (3) of subsection (a) of this Code section shall continue to exist and operate under this article.

(4) Prior to April 30, 2011, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (4) of subsection (a) of this Code section shall continue to exist and operate under this article.

(5) Prior to December 31, 2015, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (5) of subsection (a) of this Code section shall continue to exist and operate under this article. (Ga. L. 1968, p. 398, § 2; Ga. L. 1969, p. 763, § 8; Code 1981, § 2-8-5; Code 1981, § 2-8-13, as redesignated by Ga. L. 1989, p. 1420, § 1; Ga. L. 2007, p. 75, § 1/SB 165; Ga. L. 2008, p. 311, § 1/HB 649; Ga. L. 2009, p. 446, §§ 4, 5/SB 152; Ga. L. 2013, p. 65, §§ 1, 2/SB 97.)

**The 2007 amendment**, effective May 11, 2007, redesignated former subsection (a) as present paragraph (a)(1); redesignated former paragraphs (a)(1) through (a)(8) as present subparagraphs (a)(1)(A) through (a)(1)(H), respectively; added paragraph (a)(2); redesignated former subsection (b) as present paragraph (b)(1); in paragraph (b)(1), in the first sentence, inserted “paragraph (1) of”, inserted “prior to July 1, 1969,”, inserted a semicolon following “ratified”, and inserted “and prior to July 1, 1969,”, in the second sentence, substituted “such commissions” for “the aforesaid commissions and each commission hereafter created by law”, and substituted “article” for “chapter” twice; added paragraph (b)(2); redesignated former subsection (c) as present paragraph (c)(1); inserted “listed in paragraph (1) of subsection (a) of this Code section” near the end of paragraph (c)(1); and added paragraph (c)(2).

**The 2008 amendment**, effective May

12, 2008, added paragraphs (a)(3) and (c)(3).

**The 2009 amendment**, effective May 1, 2009, added paragraphs (a)(4) and (c)(4).

**The 2013 amendment**, effective April 17, 2013, added paragraphs (a)(5) and (c)(5).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2007, in paragraph (b)(2), “May 11, 2007,” was substituted for “the effective date of this paragraph” three times, and “May 11, 2007” for “the effective date of this paragraph” once.

Pursuant to Code Section 28-9-5, in 2008, “May 12, 2008” was substituted for “the effective date of this paragraph” at the end of paragraph (a)(3).

Pursuant to Code Section 28-9-5, in 2009, “May 1, 2009” was substituted for “the effective date of the paragraph” in paragraph (a)(4).

Pursuant to Code Section 28-9-5, in 2013, “on April 17, 2013” was substituted

for “on the effective date of this paragraph” in paragraph (a)(5).

**2-8-14. Composition; appointments, terms of office, and compensation; certification of membership to Secretary of State; advisory boards, special committees, and personnel; legal representation; eligibility of federation or organization members; acceptance of donations; voting; termination.**

(a) Each commission shall be composed of:

(1) The Commissioner of Agriculture, ex officio;

(2) The president of the Georgia Farm Bureau Federation, ex officio;

(3) One member, to serve as an ex officio member of all commissions, elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, who shall be a producer of an affected agricultural commodity and shall not be a member of the General Assembly;

(4) One member, to serve as an ex officio member of all commissions, elected by the Agriculture and Consumer Affairs Committee of the House of Representatives with a quorum present and a majority of those present concurring, who shall be a producer of an affected agricultural commodity and shall not be a member of the General Assembly; and

(5) Five additional members, who shall be producers of the affected agricultural commodity, to be appointed by the ex officio members of the commission; provided, however, that such additional membership of the Agricultural Commodity Commission for Beef shall consist of three beef cattle farmers, one dairy farmer, and one individual involved in the marketing of cattle; and provided, further, that for the Agricultural Commodity Commission for Cotton, the number of additional members appointed pursuant to this paragraph shall be seven. For the purposes of the appointment of such additional members, the two members elected by each of the agriculture committees of the General Assembly, who shall serve as members of each commission, shall be deemed to be ex officio members.

(b) Members elected by the agriculture committees of the General Assembly shall be elected during each regular session of the General Assembly convening in even-numbered years. Such members shall be selected so that one member is from the northern part of Georgia and one member is from the southern part. For purposes of this selection the northern part of Georgia shall be that area north of and including



Richmond, McDuffie, Warren, Hancock, Baldwin, Jones, Bibb, Crawford, Upson, Talbot, and Muscogee counties; and the southern part shall be that area south of such counties. The chairpersons of the Senate and House committees shall by agreement determine which committee shall choose the member from the northern part and which committee shall choose the member from the southern part. Such members shall serve from the date of their election until the election of their successors.

(c) The appointment of additional members of the commission by the ex officio members thereof, as provided in this Code section, shall be made by them from a list of nominees, submitted by the producers of the affected agricultural commodity, containing the names of double the number of appointments to be made. In the event of a controversy as to the producer group authorized to submit a list of nominees for appointment as members of the commission, the ex officio members shall consider and determine all issues pertaining thereto and upon making their determination shall make the appointments in accordance with such determination. Initial appointments shall be made for three members for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified and two members for a term of two years each from the effective date of their appointment and until their successors are appointed and qualified. Thereafter, successors shall be appointed for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified. Vacancies shall be filled by appointment by the ex officio members of the commission, in like manner, for the unexpired term, except that vacancies in the office of a member elected by a legislative committee shall be filled for the unexpired term by the legislative committee which made the previous appointment. Any appointive member shall be eligible for reappointment provided he is nominated as provided in subsection (b) of this Code section.

(d)(1) The ex officio members who are state officers shall be compensated as provided by law. Each such ex officio member shall be reimbursed by his respective department or from the funds of the commission for actual and necessary expenses incurred in the performance of his duties. Each such ex officio member who is a state officer may designate a representative of his department to act for him in performing any duties under this article.

(2) The two members elected by the agriculture committees of the General Assembly, as provided by subsection (a) of this Code section, shall be entitled to receive, for attending meetings of the commission, the same expenses and travel allowances which members of the General Assembly receive for attending meetings of legislative in-

terim committees. Such expenses and allowances shall be paid from funds appropriated or otherwise available to the legislative branch of state government.

(3) The appointive members of the commission and the president of the Georgia Farm Bureau Federation shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission.

(e) It shall be the duty of the Commissioner to certify to the Secretary of State the membership of each commission and each change in membership as the same occurs.

(f) Each commission is authorized to appoint advisory boards, special committees, and individuals, including technical and clerical personnel, to advise, aid, and assist the commission in the performance of its duties. Compensation for such services shall be fixed by each commission and may be paid from the funds of each commission. The Attorney General shall represent each commission in legal matters and shall be the attorney for each commission. If the Attorney General determines that outside legal counsel is necessary or desirable in connection with any legal matter of the commission, he shall so inform the particular commission involved and, upon approval of the commission, he shall employ such outside counsel. Compensation for such outside counsel shall be agreed upon between such counsel and the Attorney General, subject to the approval of the commission. Such compensation shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of such counsel.

(g) Any other provision of this article to the contrary notwithstanding, a member of any federation or organization of producers shall be eligible to be appointed as a member of any commission administering this article with respect to any agricultural commodity produced by such federation or organization or handled by it for its members who produce it.

(h) Each commission is authorized to accept donations, gifts, and other property and to use the same for commission purposes. Each commission may exercise the powers and authority conferred by law upon corporations.

(i) The two members elected by the agriculture committees of the General Assembly, as provided by subsection (a) of this Code section, as members of each commission shall be entitled to vote on matters pertaining to the organization of each such commission and upon the selection and nomination of the appointive members of each commission. Such two members shall not be entitled to vote upon any matter

pertaining to the policy provisions of the agricultural commodity nor shall they be entitled to vote upon the expenditure of any funds of the commission.

(j) Each commission shall continue as a public corporation and instrumentality of the State of Georgia until abolished by law or until terminated by referendum. (Ga. L. 1961, p. 301, §§ 9, 10; Ga. L. 1964, p. 141, § 1; Ga. L. 1968, p. 398, § 3; Ga. L. 1969, p. 763, §§ 10, 11; Ga. L. 1970, p. 86, § 1; Ga. L. 1980, p. 568, §§ 1-3; Ga. L. 1981, p. 692, § 1; Ga. L. 1982, p. 3, § 2; Code 1981, § 2-8-6; Code 1981, § 2-8-14, as redesignated by Ga. L. 1989, p. 1420, § 1; Ga. L. 2008, p. 311, § 2/HB 649; Ga. L. 2009, p. 303, § 1/HB 117; Ga. L. 2013, p. 65, § 3/SB 97; Ga. L. 2013, p. 74, § 3/HB 298.)

**The 2008 amendment**, effective May 12, 2008, in subsection (b), substituted “Members elected by the agriculture committees of the General Assembly” for “The initial two members elected by the agriculture committees of the General Assembly shall be elected to take office for a term beginning on July 1, 1980, and ending upon the election of their successors during the regular 1982 session of the General Assembly. Their successors shall be elected during the 1982 regular session of the General Assembly; and thereafter future successors” at the beginning and, in the next to last sentence, substituted “chairpersons” for “chairmen” and substituted “shall” for “will” twice.

**The 2009 amendment**, effective April 30, 2009, substituted “Senate Agriculture and Consumer Affairs Committee” for “Agriculture Committee of the Senate” in the middle of paragraph (a)(3). For intent, see the Editor’s note.

**The 2013 amendments.** — The first 2013 amendment, effective April 17, 2013, substituted “provided, however, that such additional membership of the Agricultural Commodity Commission for Beef shall

consist of three beef cattle farmers, one dairy farmer, and one individual involved in the marketing of cattle. For the” for “for the” in the middle of paragraph (a)(5). The second 2013 amendment, effective July 1, 2013, substituted “provided, however, that for the Agricultural Commodity Commission for Cotton, the number of additional members appointed pursuant to this paragraph shall be seven. For purposes of the appointment of such additional” for “for the purposes of the appointment of such five additional” in the middle of paragraph (a)(5).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2013, “and provided, further,” was substituted for “provided, however,” near the middle of the first sentence of paragraph (a)(5).

**Editor’s notes.** — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

## 2-8-23.1. Limitations on assessments.

(a) No marketing order issued by the Agricultural Commodity Commission for Beef shall impose an assessment in excess of \$1.00 per head on bovine animals sold, nor shall any assessment be placed on any bovine animal which sells for less than \$100.00.

(b) The Agricultural Commodity Commission for Beef may in its discretion lower the assessment amount imposed by any marketing



regulation duly issued under the authority provided by this article. (Code 1981, § 2-8-23.1, enacted by Ga. L. 2013, p. 65, § 4/SB 97.)

**Effective date.** — This Code section became effective April 17, 2013.

## ARTICLE 4

### AGRICULTURAL COMMODITY COMMISSION FOR GEORGIA GROWN PRODUCTS

**Effective date.** — This article became effective July 1, 2013.

**Editor's notes.** — The former article consisted of Code Sections 2-8-90 through 2-8-114, relating to the Agricultural Com-

modity Commission for Beef, and was based on Code 1981, §§ 2-8-90 through 2-8-114, enacted by Ga. L. 2004, p. 948, § 1-1, and was repealed by Ga. L. 2004, p. 948, § 3-1, effective July 1, 2006.

#### 2-8-90. Definitions.

As used in this article, the term:

(1) "Advertising and sales promotion" means, in addition to the ordinarily accepted meaning thereof, trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the normal flow of Georgia grown products to market and may include the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of Georgia grown products.

(2) "Commission" means the Agricultural Commodity Commission for Georgia Grown Products created under this article.

(3) "Georgia grown products" means any agricultural, horticultural, floricultural, silvicultural, or vegetable products commercially produced in this state.

(4) "Person" means an individual, firm, corporation, association, or any other business unit or any combination thereof and includes any state agency which engages in any of the commercial activities regulated pursuant to this article.

(5) "Producer" means any person engaged within this state in the business of producing or causing to be produced for market Georgia grown products.

(6) "Processor" means any person engaged within this state in the operation of receiving, grading, packing, canning, extracting, preserving, grinding, crushing, milling, or changing the form of a Georgia grown product for the purpose of preparing for market or marketing such product or engaged in any other activities performed for the purpose of preparing for market or marketing such product. (Code 1981, § 2-8-90, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

**2-8-91. Authority of Commissioner.**

The Commissioner shall be authorized to exercise supervisory jurisdiction over the administration and enforcement of this article. In the performance of this duty, the Commissioner is authorized to utilize the personnel and facilities of the department. (Code 1981, § 2-8-91, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

**2-8-92. Creation.**

There is created the Agricultural Commodity Commission for Georgia Grown Products. (Code 1981, § 2-8-92, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

**2-8-93. Composition; membership.**

(a) The commission shall be composed of:

(1) The Commissioner of Agriculture, ex officio;

(2) The president of the Georgia Farm Bureau, ex officio;

(3) One member elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, who shall be a producer or processor and shall not be a member of the General Assembly;

(4) One member elected by the House of Representatives Committee on Agriculture and Consumer Affairs who shall be a producer or processor and shall not be a member of the General Assembly; and

(5) Five additional members, all of whom shall be appointed by the members of the commission specified in paragraphs (1) through (4) of this subsection.

(b) The initial two members elected by the agriculture and consumer affairs committees of the General Assembly shall be elected and qualified to take office for a term ending upon the election of their successors during the regular 2016 session of the General Assembly. Their successors shall be elected during the 2016 regular session of the General Assembly; and thereafter future successors shall be elected during each regular session of the General Assembly convening in even-numbered years. Such members shall serve from the date of their election until their successors are elected and qualified. Such members shall be entitled to vote on matters pertaining to the organization of the commission and upon the selection and nomination of the appointive members of the commission, but shall not be entitled to vote upon any matter pertaining to the policy provisions of the commission, nor shall

they be entitled to vote upon the expenditure of any funds of the commission.

(c) For purposes of the appointment of additional members of the commission as provided in this Code section, a list of nominees shall be requested from producers and processors. Initial appointments shall be made for three members for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified and two members for a term of two years each from the effective date of their appointment and until their successors are appointed and qualified. Thereafter, successors shall be appointed for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified. Vacancies shall be filled by appointment in like manner, for the unexpired term, except that vacancies in the office of a member elected by a legislative committee shall be filled for the unexpired term by the legislative committee which made the previous appointment. Any appointive member shall be eligible for reappointment.

(d)(1) The members who are state officers shall be compensated as provided by law. Each such member shall be reimbursed by his or her respective department or from the funds of the commission for actual and necessary expenses incurred in the performance of his or her duties.

(2) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsection (a) of this Code section, shall be entitled to receive, for attending meetings of the commission, the same expenses and travel allowances which members of the General Assembly receive for attending meetings of legislative interim committees. Such expenses and allowances shall be paid from funds appropriated or otherwise available to the legislative branch of state government.

(3) The appointive members of the commission shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission.

(e) Each member of the commission shall be a public officer and shall take an oath of office faithfully to perform his or her duties. The fact of a member's appointment shall be certified to the Secretary of State, who shall issue the appropriate commission under the seal of his or her office. (Code 1981, § 2-8-93, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

#### **2-8-94. Public corporation and instrumentality of the State of Georgia.**

The commission, with its name annexed thereto, shall be a public corporation and an instrumentality of the State of Georgia. By that



name, style, and title, the commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts. (Code 1981, § 2-8-94, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-95. Powers, duties, and authority of commission.**

(a) The commission is authorized to accept donations, gifts, grants, and other funds or property and to use the same for commission purposes. The commission may exercise the powers and authority conferred by law upon corporations.

(b) Funds received by the Commissioner under this article shall be held in trust for the commission. Such funds shall be deposited, accounted for, and disbursed in the same manner as the funds of this state but shall not be required to be deposited in the state treasury and appropriated therefrom as are other state funds. It is the express intent and purpose of this article to authorize the receipt, collection, and disbursement by the Commissioner of such funds as trust funds of the commission without complying with the requirement applicable to funds collected for the use and benefit of the state.

(c) The Commissioner is authorized and it shall be his or her duty to receive, collect, and disburse the funds of the commission qualifying and operating under this article. The Commissioner shall disburse funds of the commission only upon the written authorization of the commission.

(d) Any person who handles funds under this article shall be bonded with good and sufficient surety in an amount determined by the Commissioner for the accounting of any and all funds coming into his or her hands. (Code 1981, § 2-8-95, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-96. Immunity from liability.**

The members and employees of the commission and the Commissioner shall be immune from liability to the same extent as the state and state officers and employees under Article 2 of Chapter 21 of Title 50, "The Georgia Tort Claims Act." (Code 1981, § 2-8-96, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-97. Authority of Commissioner to issue, administer, and enforce provisions of marketing orders; hearings.**

(a) The Commissioner, upon the approval and request of the commission, is authorized to issue, administer, and enforce the provisions of marketing orders.

(b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this article with respect to any Georgia grown product, he or she shall, either upon his or her own motion, upon the motion of the commission, upon the application of any producer, or any organization of such persons, give due notice of and an opportunity for a public hearing upon a proposed marketing order or amendments to an existing marketing order.

(2) Notice of any hearing called for such purpose shall be given by the Commissioner or the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the capital of this state and in such other newspapers as the Commissioner may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) The hearing shall be public and all testimony shall be received under oath. A full and complete record of the proceedings at such hearing shall be made and maintained. The hearing shall, in all respects, be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing may be conducted by the commission, by a member of the commission, or by the Commissioner, as may be designated by the commission in each instance, but no decision shall be made based on hearings conducted other than by the commission itself, at which a majority of the members thereof are present, until the members of the commission have been afforded an opportunity to review the hearing record. Where the commission conducts hearings, its recommendation shall be based on the findings reached after a review of the record of the hearing. (Code 1981, § 2-8-97, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

## **2-8-98. Recommendation of promulgation of a marketing order.**

If, upon the basis of the record of testimony and evidence received at the hearing provided for in Code Section 2-8-97, the commission determines that the issuance of a marketing order or amendment will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order containing any one or more of the following provisions, but no others:

(1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for Georgia grown products in this state or for the

prevention, modification, or removal of trade barriers which obstruct the normal flow of Georgia grown products to market. The commission is authorized to prepare, issue, administer, and enforce plans for promoting the sale of Georgia grown products, provided that any such plan shall be directed toward promoting and increasing the sale, use, and utilization of Georgia grown products only, without reference to any other brand or trade name; provided, further, that no advertising or sales promotion program shall be issued by the commission which makes use of false or unwarranted claims on behalf of or disparages the quality, value, sale, or use of any other commodity;

(2) Provisions for carrying on research studies in promoting the production, marketing, sale, use and utilization, and improvement of Georgia grown products or any combination thereof and for the expenditure of moneys for such purposes; and

(3) Provisions establishing or providing authority for establishing an educational program designed to acquaint producers or the general public about Georgia grown products. (Code 1981, § 2-8-98, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

## **2-8-99. Amendments to marketing orders; notice; rules and regulations; termination of orders.**

(a)(1) Upon the recommendation of not fewer than three of the appointive members of the commission, the Commissioner or the commission may make effective minor amendments to a marketing order. The Commissioner or the commission may require a public hearing upon minor amendments if in the Commissioner's or the commission's opinion the substance of such minor amendments so warrants.

(2) In making effective major amendments to a marketing order, the Commissioner or the commission shall follow the same procedures prescribed in this article for the institution of a marketing order. For the purpose of this article, a major amendment to a marketing order shall include, but shall not be limited to, any amendment which adds to or deletes from any such marketing order any of the following types of regulations or authorizations:

(A) Authority for the establishment of plans for advertising and sales promotion of Georgia grown products;

(B) Authority to increase an assessment rate beyond the maximum rate authorized by the marketing order in effect;

(C) Extension of the termination date of any marketing order; or

(D) Authority for carrying out research studies in the production or distribution of Georgia grown products.



(3) Modification of any provisions of any marketing order in effect, for the purpose of clarifying the meaning or application of such provisions or of modifying administrative procedures for carrying out such provisions, are declared not to be a major amendment of such marketing order.

(b) Upon the issuance of any order making effective a marketing order or any suspension, amendment, or termination thereof, a notice thereof shall be posted on a public bulletin board maintained at the Department of Agriculture; and a copy of such notice shall be published as the Commissioner or the commission may prescribe. No marketing order nor any suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of such posting and publication.

(c) The Commissioner or the commission shall have the power, consistent with this article and in accordance with marketing orders and amendments made effective under this article, to establish such general rules and regulations for uniform application to all marketing orders issued pursuant to this article as may be necessary to facilitate the administration and enforcement of such marketing orders. The provisions of subsection (b) of this Code section relative to posting, publication, and time of taking effect shall be applicable to any such general rule or regulation established pursuant to this subsection and applicable to marketing orders generally. Such notice shall be furnished by the Commissioner or the commission for each marketing order in active operation.

(d) Upon the recommendation of the commission, the Commissioner shall have the power, consistent with this article, to establish administrative rules and regulations for each marketing order issued and made effective as may be necessary to facilitate the supervision, administration, and enforcement of each such order. The provisions of subsection (b) of this Code section relative to posting, publication, mailing of notice, and time of taking effect shall be applicable to any such administrative rules and regulations.

(e) Unless extended as provided in this article, all marketing orders issued under the authority of this article shall terminate at the expiration of one year from the date of the issuance of the original marketing order or, if such marketing order has been extended, at the expiration of one year after the date of any such extension. (Code 1981, § 2-8-99, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

## **2-8-100. Levying and collection of assessments.**

(a) For the purpose of providing funds to defray the necessary expenses incurred by the commission in the formulation, issuance,

administration, and enforcement of any marketing order which authorizes the carrying out of advertising and sales promotion plans, such order shall provide for the levying of assessments upon producers or processors utilizing the Georgia grown trademark. Such orders shall be in sufficient amounts to defray the expenses of such activities. Each such order shall indicate the maximum rate of any such assessment. The commission shall adopt budgets to cover such expenses and establish the assessment rate necessary to provide sufficient funds. If the commission finds that each such budget and assessment rate is proper and equitable and will provide sufficient moneys to defray such expenses, they may approve such budget and approve and levy such assessment.

(b) The commission may prescribe such rules as may be necessary and reasonable for the orderly collection of assessments and may take all legal action necessary to enforce payment of such assessments. (Code 1981, § 2-8-100, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-101. Limitations on application of marketing orders.**

Marketing orders issued by the commission may be limited in their application by prescribing the marketing areas or portions of this state in which a particular order shall be effective, provided that no marketing order shall be issued by the commission unless it embraces all persons of a like class. (Code 1981, § 2-8-101, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-102. Deposit and disbursement of funds; investment.**

(a) Any moneys collected by the commission or the Commissioner pursuant to this article shall be deposited in a bank or other depository approved by the commission and shall be disbursed by the Commissioner only for the necessary expenses incurred by the commission and the Commissioner, as approved by the commission. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the Commissioner. All such expenditures by the Commissioner shall be audited at least annually by the state auditor and a copy of such audit shall be delivered within 30 days after the completion thereof to the Governor, the Commissioner, and the commission. If ever the commission is abolished by law, any funds remaining in its hands at such time shall be used to pay the existing obligations of the commission and the expenses incurred in winding up the affairs of the commission. Any excess remaining shall escheat to the state and shall be paid by the Commissioner into the state treasury as unclaimed trust funds.

(b) Moneys deposited by the Commissioner pursuant to this Code section which the commission determines are available for investment

may be invested or reinvested by the Commissioner as provided for funds of this state or of any retirement system created by law, provided that all moneys invested shall be invested in those areas of production that will provide a return at the highest bank interest rate available. It shall be the duty of the commission to annually review these investments and determine that such investments comply with this Code section. (Code 1981, § 2-8-102, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-103. Duties of Attorney General.**

(a) The Attorney General of this state shall represent the commission in legal matters and shall be the attorney for the commission.

(b) The Attorney General shall, upon complaint by the commission, bring an action in the superior court in the name of the commission for civil penalties or for injunctive relief, including specific performance of any obligation imposed by a marketing order or any rule or regulation issued under this article, or both, against any person violating any provisions of this article or of any marketing order or any rule or regulation duly issued by the commission under this article. It shall not be necessary in such event to allege or prove lack of an adequate remedy at law. (Code 1981, § 2-8-103, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-104. Violations.**

Any person who violates any provision of this article or any provision of any marketing order duly issued by the commission under this article shall be guilty of a misdemeanor. (Code 1981, § 2-8-104, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

### **2-8-105. Rules and regulations.**

The commission is empowered to make all necessary rules and regulations for the purpose of carrying out the purposes of this article. The promulgation, adoption, and amendment of rules and regulations by the commission shall be subject to the requirements of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 2-8-105, enacted by Ga. L. 2013, p. 74, § 1/HB 298.)

## **ARTICLE 5**

### **AGRICULTURAL COMMODITY COMMISSION FOR EQUINES**

**Editor’s notes.** — Ga. L. 2006, p. 632, provides that the enactment of this article § 3, not codified by the General Assembly, became effective January 1, 2007, only



upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was

approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

### **2-8-120. Applicability.**

This article shall apply only to the Agricultural Commodity Commission for Equines. (Code 1981, § 2-8-120, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, “Commodity” was substituted for “Commodities”.

### **2-8-121. Definitions.**

As used in this article, the term:

(1) “Advertising and sales promotion” means, in addition to the ordinarily accepted meaning thereof, trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the normal flow of equines to market and may include the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of any equines.

(2) “Commission” means the Agricultural Commodity Commission for Equines created under this article.

(3) “Equine” means any member of the Equidae family, including horses, mules, hinnies, and asses.

(4) “Person” means an individual, firm, corporation, association, or any other business unit or any combination thereof and includes any state agency which engages in any of the commercial activities regulated pursuant to this article.

(5) “Producer” means any person who owns one or more equines or is engaged within this state in the business of buying, selling, boarding, holding, training, breeding, riding, pulling vehicles with, or otherwise utilizing equines for similar purposes. (Code 1981, § 2-8-121, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

### **2-8-122. Commissioner’s authority.**

The Commissioner shall be authorized to exercise supervisory jurisdiction over the administration and enforcement of this article. In the performance of this duty, the Commissioner is authorized to utilize the personnel and facilities of the department. (Code 1981, § 2-8-122, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**2-8-123. Commission created.**

There is created the Agricultural Commodity Commission for Equines. (Code 1981, § 2-8-123, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**2-8-124. Commission membership; nomination and election of commission members.**

(a) The commission shall be composed of:

(1) The Commissioner of Agriculture, ex officio;

(2) The president of the Georgia Farm Bureau, ex officio;

(3) One member elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, who shall be a producer and shall not be a member of the General Assembly;

(4) One member elected by the House of Representatives Committee on Agriculture and Consumer Affairs with a quorum present and a majority of those present concurring, who shall be a producer and shall not be a member of the General Assembly; and

(5) Five additional members, all of whom shall be appointed by the members of the commission specified in paragraphs (1) through (4) of this subsection. At least four of such appointees shall be producers.

(b) The initial two members elected by the agriculture and consumer affairs committees of the General Assembly shall be elected and qualified to take office for a term beginning on January 1, 2007, and ending upon the election of their successors during the regular 2009 session of the General Assembly. Their successors shall be elected during the 2009 regular session of the General Assembly; and thereafter future successors shall be elected during each regular session of the General Assembly convening in odd-numbered years. Such members shall be selected so that one member is from the northern part of Georgia and one member is from the southern part. For purposes of this selection the northern part of Georgia shall be that area north of and including Richmond, McDuffie, Warren, Hancock, Baldwin, Jones, Bibb, Crawford, Upson, Talbot, and Muscogee counties; and the southern part shall be that area south of such counties. The chairpersons of the Senate and House committees shall by agreement determine which committee will choose the member from the northern part and which committee will choose the member from the southern part. Such members shall serve from the date of their election until their successors are elected and qualified.

(c) For purposes of the appointment of additional members of the commission as provided in this Code section, a list of nominees shall be requested from producers of equines. Initial appointments shall be made for three members for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified and two members for a term of two years each from the effective date of their appointment and until their successors are appointed and qualified. Thereafter, successors shall be appointed for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified. Vacancies shall be filled by appointment in like manner, for the unexpired term, except that vacancies in the office of a member elected by a legislative committee shall be filled for the unexpired term by the legislative committee which made the previous appointment. Any appointive member shall be eligible for reappointment.

(d)(1) The members who are state officers shall be compensated as provided by law. Each such member shall be reimbursed by his or her respective department or from the funds of the commission for actual and necessary expenses incurred in the performance of his or her duties. Each such member who is a state officer may designate a representative of his or her department to act for the officer in performing any duties under this article.

(2) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsection (a) of this Code section, shall be entitled to receive, for attending meetings of the commission, the same expenses and travel allowances which members of the General Assembly receive for attending meetings of legislative interim committees. Such expenses and allowances shall be paid from funds appropriated or otherwise available to the legislative branch of state government.

(3) The appointive members of the commission shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission.

(e) It shall be the duty of the Commissioner to certify to the Secretary of State the membership of the commission and each change in membership as the same occurs.

(f) The commission is authorized to appoint advisory boards, special committees, and individuals, including technical and clerical personnel, to advise, aid, and assist the commission in the performance of its duties. Compensation for such services shall be fixed by the commission and may be paid from the funds of the commission. The Attorney General shall represent the commission in legal matters and shall be



the attorney for the commission. If the Attorney General determines that outside legal counsel is necessary or desirable in connection with any legal matter of the commission, he or she shall so inform the commission and, upon approval of the commission, shall employ such outside counsel. Compensation for such outside counsel shall be agreed upon between such counsel and the Attorney General, subject to the approval of the commission. Such compensation shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of such counsel.

(g) Any other provision of this article to the contrary notwithstanding, a member of any federation or organization of producers shall be eligible to be appointed as a member of the commission with respect to any equine produced by such federation or organization or handled by it for its members who produce it.

(h) The commission is authorized to accept donations, gifts, grants, revenue derived from the sale of special license plates as may be otherwise provided by law, and other funds or property and to use the same for commission purposes. The commission may exercise the powers and authority conferred by law upon corporations.

(i) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsection (a) of this Code section, as members of the commission shall be entitled to vote on matters pertaining to the organization of the commission and upon the selection and nomination of the appointive members of the commission. Such two members shall not be entitled to vote upon any matter pertaining to the policy provisions of the commission nor shall they be entitled to vote upon the expenditure of any funds of the commission.

(j) The commission shall continue as a public corporation and instrumentality of the State of Georgia until abolished by law. (Code 1981, § 2-8-124, enacted by Ga. L. 2006, § 632, § 2/SB 380.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, “qualified” was substituted for “qualification” in the first sentence of subsection (b).

**2-8-125. Commission to be a public corporation and instrumentality of the state; powers; transaction of commission business.**

The commission, with its name annexed thereto, shall be a public corporation and an instrumentality of the State of Georgia. By that name, style, and title, the commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts. The commission shall name its chairperson and determine a quorum for the transaction of business. The commission shall assume the duties

and exercise the authority provided in this article without further formality than that provided in this article. Each member of the commission shall be a public officer and shall take an oath of office faithfully to perform his or her duties. Such oath shall be administered by the Commissioner or some other person qualified to administer oaths. The fact of a member's appointment shall be certified to the Secretary of State, who shall issue the appropriate commission under the seal of his or her office. (Code 1981, § 2-8-125, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, “each” was deleted preceding “the commission” in the fifth sentence.

### **2-8-126. Receipt, collection, and disbursement of funds.**

The Commissioner is authorized and it shall be his or her duty to receive, collect, and disburse the funds of the commission qualifying and operating under this article. The Commissioner shall disburse funds of the commission only upon the written authorization of the commission. (Code 1981, § 2-8-126, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

### **2-8-127. Funds received under this article to be held in trust for the commission.**

Funds received by the Commissioner under this article shall be held in trust for the commission. Such funds shall be deposited, accounted for, and disbursed in the same manner as the funds of this state but shall not be required to be deposited in the state treasury and appropriated therefrom as are other state funds. It is the express intent and purpose of this article to authorize the receipt, collection, and disbursement by the Commissioner of such funds as trust funds of the commission without complying with the requirement applicable to funds collected for the use and benefit of the state. (Code 1981, § 2-8-127, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

### **2-8-128. Persons handling funds to be bonded.**

Any person who handles funds under this article shall be bonded with good and sufficient surety in an amount determined by the Commissioner for the accounting of any and all funds coming into his or her hands. (Code 1981, § 2-8-128, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**2-8-129. Committee members and employees not responsible individually for errors in judgment, mistakes or other acts.**

The members and employees of the commission and the Commissioner shall not be held responsible individually in any way whatsoever to any producer, distributor, or other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member. (Code 1981, § 2-8-129, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**2-8-130. Commission authorized to share information with state and federal government agencies.**

The Commissioner and the commission are authorized to confer with and to make any information obtained pursuant to this article available to the duly constituted governmental authorities of this state, of other states, of political subdivisions of this state or other states, and of the United States who, by reason of their duties, have legitimate concern with the subject and to cooperate with all such authorities for the purpose of obtaining administrative uniformity and achieving the objectives of this article. (Code 1981, § 2-8-130, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**2-8-131. Issuance, administration, and enforcement of marketing orders; hearing.**

(a) The Commissioner, upon the approval and request of the commission, is authorized to issue, administer, and enforce the provisions of marketing orders.

(b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this article with respect to any equines, he or she shall, either upon his or her own motion, upon the motion of the commission, or upon the application of any producer, or any organization of such persons, give due notice of and an opportunity for a public hearing upon a proposed marketing order or amendments to an existing marketing order.

(2) Notice of any hearing called for such purpose shall be given by the Commissioner or the commission by publishing a notice of such



hearing for a period of not less than five days in a newspaper of general circulation published in the capital of the state and in such other newspapers as the Commissioner may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) The hearing shall be public and all testimony shall be received under oath. A full and complete record of the proceedings at such hearing shall be made and maintained on file in the office of the Commissioner or the commission. The hearing shall, in all respects, be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing may be conducted by the commission, by a member of the commission, or by the Commissioner, as may be designated by the commission in each instance, but no decision shall be made based on hearings conducted other than by the commission itself, at which a majority of the members thereof are present, until the members of the commission have been afforded an opportunity to review the hearing record. Where the commission conducts hearings, its recommendation shall be based on the findings reached after a review of the record of the hearing. (Code 1981, § 2-8-131, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

#### **2-8-132. Provisions for establishment of advertising, research, and education programs.**

If, upon the basis of the record of testimony and documentary evidence received at the hearing provided for in Code Section 2-8-131 and the facts officially noticed therein, the commission determines that the issuance of a marketing order or an amendment will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order containing any one or more of the following provisions, but no others:

(1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for equine grown in this state or for the prevention, modification, or removal of trade barriers which obstruct the normal flow of equines to market. The commission is authorized to prepare, issue, administer, and enforce plans for promoting the sale of equines, provided that any such plan shall be directed toward promoting and increasing the sale, use, and utilization of equines without reference to a particular producer or breed; and provided, further, that no advertising or sales promotion program shall be issued by the Commissioner or the commission which makes use of false or unwarranted claims on behalf of any equines or disparages the quality, value, sale, or use of any other agricultural commodity;

(2) Provisions for carrying on research studies in promoting the production, marketing, sale, use and utilization, and improvement of equines or any combination thereof and for the expenditure of moneys for such purposes. In any research carried on under this paragraph, the Commissioner and the commission shall cooperate in selecting the research project or projects to be carried on from time to time. Such projects shall be carried out by postsecondary educational institutions or private organizations selected by the commission;

(3) Provisions establishing or providing authority for establishing an educational program designed to acquaint producers or the general public about the equine industry and its associated issues. (Code 1981, § 2-8-132, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

**2-8-133. Amendments to, rules and regulations governing, and expiration and termination of marketing orders.**

(a)(1) Upon the recommendation of not less than three of the appointive members of the commission, the Commissioner or the commission may make effective minor amendments to a marketing order. The Commissioner or the commission may require a public hearing upon minor amendments if in the Commissioner's or the commission's opinion the substance of such minor amendments so warrants.

(2) In making effective major amendments to a marketing order, the Commissioner or the commission shall follow the same procedures prescribed in this article for the institution of a marketing order. For the purpose of this article, a major amendment to a marketing order shall include, but shall not be limited to, any amendment which adds to or deletes from any such marketing order any of the following types of regulations or authorizations:

(A) Authority for the establishment of plans for advertising and sales promotion of equines; or

(B) Authority for carrying out research studies in the production or distribution of equines.

(3) Modification of any provisions of any marketing order in effect, for the purpose of clarifying the meaning or application of such provisions or of modifying administrative procedures for carrying out such provisions, are declared not to be a major amendment of such marketing order.

(b) Upon the issuance of any order making effective a marketing order or any suspension, amendment, or termination thereof, a notice thereof shall be posted on a public bulletin board maintained at the Department of Agriculture; and a copy of such notice shall be published

as the Commissioner or the commission may prescribe. No marketing order nor any suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of such posting and publication.

(c) The Commissioner or the commission shall have the power, consistent with this article and in accordance with marketing orders and agreements made effective under this article, to establish such general rules and regulations for uniform application to all marketing orders issued pursuant to this article as may be necessary to facilitate the administration and enforcement of such marketing orders. The provisions of subsection (b) of this Code section relative to posting, publication, and time of taking effect shall be applicable to any such general rule or regulation established pursuant to this subsection and applicable to marketing orders generally. Such notice shall be furnished by the Commissioner or the commission for each marketing order in active operation.

(d) Upon the recommendation of the commission, the Commissioner shall have the power, consistent with this article, to establish administrative rules and regulations for each marketing order issued and made effective as may be necessary to facilitate the supervision, administration, and enforcement of each such order. The provisions of subsection (b) of this Code section relative to posting, publication, mailing of notice, and time of taking effect shall be applicable to any such administrative rules and regulations.

(e) Unless extended as provided in this Code section, all marketing orders issued under the authority of this article shall expire, terminate, and become of no force and effect at the expiration of three years from the date of the issuance of the original marketing order or, if such marketing order has been extended, at the expiration of three years after the date of any such extension. (Code 1981, § 2-8-133, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

#### **2-8-134. Limited application of marketing orders.**

Marketing orders issued by the commission may be limited in their application by prescribing the marketing areas or portions of the state in which a particular order shall be effective, provided that no marketing order shall be issued by the commission unless it embraces all persons of a like class. (Code 1981, § 2-8-134, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)



**2-8-135. Commission authorized to borrow funds for certain purposes; disposition of funds collected pursuant to this article.**

(a) In the event that the commission has reason to believe that the administration of a marketing order will be facilitated or the attainment of the purposes and objectives of the marketing order will be promoted thereby, the commission is authorized to borrow money, with or without interest, to carry out any provision of any marketing order authorized by this article and may hypothecate anticipated funds due to the commission as otherwise provided by law and applicable to such respective provisions.

(b) In lieu of requiring advance deposits for defraying administrative or advertising and sales promotion expenses until such time as sufficient moneys are collected for such purposes from any funds due to the commission as otherwise provided by law, the Commissioner is authorized to receive and disburse for such purposes contributions made by producers or distributors. Neither the commission nor the Commissioner shall be held responsible for the repayment of such contributions, provided that whenever collections from the payment of any funds due to the commission and credited to the respective marketing order accounts are sufficient so to warrant, the commission shall recommend and the Commissioner shall repay contributions.

(c) Any moneys collected by the commission or the Commissioner pursuant to this article shall be deposited in a bank or other depository approved by the commission and shall be disbursed by the Commissioner only for the necessary expenses incurred by the commission and the Commissioner, as approved by the commission. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the Commissioner. All such expenditures by the Commissioner shall be audited at least annually by the state auditor and a copy of such audit shall be delivered within 30 days after the completion thereof to the Governor, the Commissioner, and the commission. If ever the commission is abolished by law, any funds remaining in its hands at such time shall be used to pay the existing obligations of the commission and the expenses incurred in winding up the affairs of the commission. Any excess remaining shall escheat to the state and shall be paid by the Commissioner into the state treasury as unclaimed trust funds.

(d) Moneys deposited by the Commissioner pursuant to this Code section which the commission determines are available for investment may be invested or reinvested by the Commissioner as provided for funds of this state or of any retirement system created by law, provided that all moneys invested shall be invested in those areas of production

that will provide a return at the highest bank interest rate available. It shall be the duty of the commission annually to review these investments and determine that such investments comply with this Code section. (Code 1981, § 2-8-135, enacted by Ga. L. 2006, p. 632, § 2/SB 380.)

CHAPTER 8A

EMERGING CROPS FUND ACT

Sec.		Sec.	
2-8A-2.	Purpose of chapter.	2-8A-6.	Application for interest loan; maximum amount; maximum rate of interest; security.
2-8A-3.	Definitions.		
2-8A-4.	Crops included as emerging crops [Repealed].	2-8A-7.	Repayment of interest loan.
2-8A-5.	Fund established.		

2-8A-1. Short title.

Editor’s notes. — Ga. L. 2013, p. 671, § 1/SB 91, effective May 6, 2013, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

2-8A-2. Purpose of chapter.

The purpose of this chapter is to promote economic development by encouraging the production of plant or animal crops in Georgia which are produced commercially and to make available to consumers emerging crops grown in Georgia. (Code 1981, § 2-8A-2, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.)

The 2013 amendment, effective May 6, 2013, substituted “are produced commercially” for “have not been produced commercially to their full potential, to

encourage farmers of this state to shift from enterprises with low-profit margins to those with higher profit margins,” near the middle of this Code section.

2-8A-3. Definitions.

As used in this chapter, the term:

(1) “Emerging crop” means a plant or animal crop for which consumers have a demand.

(2) “Farmer” means a resident of Georgia who engages in or wishes to engage in the commercial production of an emerging crop on land in Georgia. This term shall include individuals, family-farm corporations meeting the requirements of paragraph (2) of subsection (b) of Code Section 48-5-7.1, and partnerships in which all of the partners

are either individuals or family-farm corporations meeting such requirements.

(3) “Fund” means the Emerging Crops Fund established in Code Section 2-8A-5.

(4) “Georgia Development Authority” or “authority” means the Georgia Development Authority provided for in Chapter 10 of Title 50.

(5) “Interest loan” means a loan made from the fund to pay the interest on a loan made by a lender to a farmer to finance the costs of production of an emerging crop.

(6) “Lender” means a commercial bank, savings bank, savings and loan association, federal land bank, farm credit bank, production credit association, or other farm credit agency which is domiciled or qualified to do business in Georgia or the Farmers Home Administration. (Code 1981, § 2-8A-3, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.)

**The 2013 amendment**, effective May 6, 2013, in paragraph (1), substituted “have a demand” for “have a growing demand, which has potential for economic development, which has a development time from beginning of production to commercial harvest or initial sale of the product of not less than 18 months nor more

than five years, and which has been designated an emerging crop by the Georgia Development Authority or by Code Section 2-8A-4”; and, near the end of paragraph (5), substituted “the costs of production” for “the nonland capital costs of establishing production”.

#### **2-8A-4. Crops included as emerging crops.**

Reserved. Repealed by Ga. L. 2013, p. 671, § 1/SB 91, effective May 6, 2013.

**Editor’s notes.** — This Code section was based on Code 1981, § 2-8A-4, enacted by Ga. L. 1990, p. 1696, § 1.

#### **2-8A-5. Fund established.**

(a) Pursuant to Article III, Section IX, Paragraph VI(j) of the Constitution of Georgia, there is established as a separate fund of the Georgia Development Authority a fund to be known as the “Emerging Crops Fund,” which shall be used to make interest loans on loans made to farmers for costs of production of emerging crops on land in Georgia. The fund shall be administered by the Georgia Development Authority. The Georgia Development Authority shall by rules or regulations develop definitions, guidelines, standards, requirements, and procedures for making interest loans as authorized in this chapter. Funds for



the Emerging Crops Fund and for the administration of said fund shall be provided from the following sources:

(1) Appropriations by the General Assembly, and funds appropriated to the Emerging Crops Fund shall be presumptively concluded to have been committed to the purpose for which appropriated and shall not lapse;

(2) The repayment of interest loans made from the fund; and

(3) Any interest or earnings made from the investment of funds of the Emerging Crops Fund.

(b) The Georgia Development Authority shall maintain the Emerging Crops Fund entirely separate from any other funds of the authority, and no funds available to the authority to carry out its purposes under Chapter 10 of Title 50 shall be used for the purposes of the Emerging Crops Fund. The source of funds provided for in subsection (a) of this Code section shall be the only source of funds for the Emerging Crops Fund.

(c) Except as limited by subsection (b) of this Code section, the Georgia Development Authority may exercise any power possessed by the authority under Chapter 10 of Title 50 to carry out the provisions of this chapter. (Code 1981, § 2-8A-5, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.)

**The 2013 amendment**, effective May 6, 2013, in subsection (a), substituted “Pursuant to Article III, Section IX, Paragraph VI (j) of the Constitution of Georgia, there” for “There” at the beginning, and substituted “costs of production” for “nonland capital costs of establishing production” near the middle.

## **2-8A-6. Application for interest loan; maximum amount; maximum rate of interest; security.**

Any lender which has made or makes a loan to a farmer to finance the costs of production of an emerging crop on land in Georgia may make application to the Georgia Development Authority for an interest loan to pay interest on the loan during the period from the beginning of production to harvest or initial sale of the product, which payment shall be made from the fund. The maximum amount of interest loans from the fund for the benefit of any one farmer shall be \$50,000.00; provided, however, that the Georgia Development Authority in administering the fund shall give priority to smaller interest loans. During the period that the Georgia Development Authority pays the interest on a loan from the fund, the maximum rate of interest which may be charged on the loan by the lender shall be as established from time to time by the Georgia Development Authority. By payment of the interest on a loan, neither the Georgia Development Authority nor the State of Georgia shall be a guarantor of the loan. The Georgia Development Authority shall, by

rule or regulation, require such security or lien as may be necessary to provide adequate security for the authority as condition for making an interest loan as authorized by this chapter. (Code 1981, § 2-8A-6, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.)

**The 2013 amendment**, effective May 6, 2013, substituted “costs of production” for “nonland capital costs of establishing production” near the beginning of the first sentence, inserted “that” preceding “the Georgia Development Authority” in the proviso near the middle of the second

sentence, and substituted “as established from time to time by the Georgia Development Authority” for “2 1/2 percent per annum above the prime rate charged by banks on short-term business loans as published daily in the *Wall Street Journal*” at the end of the third sentence.

2-8A-7. Repayment of interest loan.

Repayment of an interest loan made from the fund shall be deferred for a period of time not more than five years or the time when the emerging crop should reach maturity, whichever is later. The schedule for repayment of the interest loan shall be a period of time equal to two times the period that interest is paid on the loan from the fund for that emerging crop. No interest shall be charged on interest loans from the fund, and only the amount actually loaned from the fund shall be required to be repaid. Repayment of interest loans from the fund shall be made to the lender, which shall remit the amounts collected to the Georgia Development Authority for deposit into the fund. (Code 1981, § 2-8A-7, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.)

**The 2013 amendment**, effective May 6, 2013, added “, whichever is later” at the end of the first sentence.

CHAPTER 9

DEALERS IN AGRICULTURAL PRODUCTS

Article 1		Sec.	
General Provisions		2-9-33.	Issuance, renewal, and expiration of license.
Sec.	Definitions.	2-9-34.	Bond — Required.
2-9-1.	Issuance of license.	2-9-42.1.	Publication of names, locations, and manner of payment by licensed grain dealers.
2-9-4.	Bond — Required.		
2-9-5.	Applicability of article.		
2-9-15.			
Article 2			
Grain Dealers			
2-9-30.	Definitions.		

## ARTICLE 1

## GENERAL PROVISIONS

**Law reviews.** — For article, “Perishable Agricultural Commodities Act,” see 4 Ga. St. B.J. 20 (1999).

**2-9-1. Definitions.**

As used in this article, the term:

(1) “Agricultural products” includes fruits, vegetables, pecans, and cotton but does not include dairy products, tobacco, grains, eggs, and other basic farm crops.

(2) “Dealer in agricultural products” means any person, association, itinerant dealer, partnership, or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural products purchased from the producer or his or her agent or representative or received on consignment from the producer or his or her agent or representative or received to be handled on a net return basis from the producer. The term “dealer in agricultural products” also includes any person buying, selling, processing, or shelling pecan nuts, including any and every kind and variety of pecan nuts.

(3) “Net return basis” means a purchase for sale of agricultural products from a producer or shipper at a price which is not fixed or stated at the time the agricultural products are shipped from the point of origin. The term includes all purchases made “at the market price,” “at net worth,” and on similar terms indicating that the buyer is the final arbiter of the price to be paid.

(4) “On consignment” means any receiving or sale of agricultural products for the account of a person, other than the seller, wherein the seller acts as the agent for the owner.

(5) “Producer” means any producer of agricultural products. (Ga. L. 1956, p. 617, § 1; Ga. L. 1957, p. 7, § 1; Ga. L. 1962, p. 127, § 1; Ga. L. 1962, p. 636, § 1; Ga. L. 1978, p. 1450, § 1; Ga. L. 1991, p. 1053, § 1; Ga. L. 1992, p. 2149, § 1; Ga. L. 1999, p. 800, § 1; Ga. L. 2000, p. 1510, § 1; Ga. L. 2013, p. 797, § 1/HB 268.)

**The 2013 amendment**, effective July 1, 2013, in paragraph (1), deleted “eggs,” preceding “pecans,” and inserted “eggs,” following “grains,”; and inserted “or her” twice in the first sentence of paragraph (2).



#### 2-9-4. Issuance of license.

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-7, he or she shall issue to such applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-5, a state license entitling the applicant to conduct business as a dealer in agricultural products. An annual fee not to exceed \$400.00 shall be required before a license is issued. Such license shall be valid until revoked or suspended as provided in this article, or until the annual license renewal fee is unpaid. (Ga. L. 1956, p. 617, § 5; Ga. L. 2013, p. 797, § 2/HB 268.)

**The 2013 amendment**, effective July 1, 2013, inserted “or she” near the middle of the first sentence, substituted “An annual fee not to exceed \$400.00 shall be required before a license is issued” for “No

fee for such license shall be charged” in the second sentence, and added “, or until the annual license renewal fee is unpaid” at the end of the last sentence.

#### 2-9-5. Bond — Required.

Before any license is issued the applicant shall make and deliver to the Commissioner a surety bond executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of “good standing” issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the Commissioner of Insurance to notify the Commissioner of Agriculture within 30 days. The bond shall be in such amount as the Commissioner may determine, not exceeding an amount equal to the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the applicant; provided, however, that the minimum amount of such bond shall be \$10,000.00 and the maximum amount of such bond shall be \$230,000.00; provided, further, that in the case of pecans, such bond shall not exceed \$500,000.00. Such bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to producers or their agents or representatives of the proceeds of all agricultural products handled or sold by such dealer. However, in lieu of a surety bond, the Commissioner may accept a cash bond, which shall in all respects be subject to the same claims and actions as would exist against a surety bond. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given, conforming with the requirements of this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the

license of such person shall be immediately revoked by operation of law without notice or hearing and such person shall be ineligible to reapply for such license for a period of four years after such revocation. (Ga. L. 1956, p. 617, § 6; Ga. L. 1991, p. 1053, § 2; Ga. L. 1992, p. 2149, § 2; Ga. L. 1999, p. 800, § 2; Ga. L. 2000, p. 1510, § 2; Ga. L. 2013, p. 797, § 3/ HB 268.)

**The 2013 amendment**, effective July 1, 2013, substituted “applicant; provided, however, that the minimum amount of such bond shall be \$10,000.00 and the maximum amount of such bond shall be \$230,000.00; provided, further, that in the case of pecans, such bond shall not exceed

\$500,000.00” for “applicant or in the case of cotton not to exceed \$150,000.00” in the fourth sentence, and added “and such person shall be ineligible to reapply for such license for a period of four years after such revocation” at the end of the last sentence.

**2-9-15. Applicability of article.**

(a) This article shall not apply to:

(1) Farmers or groups of farmers in the sale of agricultural products grown by themselves;

(2) Persons who buy for cash, paying at the time of purchase in United States currency, certified check, cashier’s check, or the equivalent; or

(3) Holders of food sales establishment licenses issued pursuant to Article 2 of Chapter 2 of Title 26, the “Georgia Food Act,” who conduct no business at the wholesale level and who have fewer than ten employees.

(b) No warehouse that is in full compliance with the provisions of Article 1 of Chapter 4 of Title 10 shall be required to obtain a license or maintain a surety bond under this article. (Ga. L. 1956, p. 617, § 2; Ga. L. 1978, p. 1450, § 2; Ga. L. 1991, p. 1053, § 3; Ga. L. 1992, p. 2149, § 3; Ga. L. 2000, p. 1510, § 3; Ga. L. 2013, p. 797, § 4/ HB 268.)

**The 2013 amendment**, effective July 1, 2013, designated the existing provisions of this Code section as subsection (a) and added subsection (b).

ARTICLE 2  
GRAIN DEALERS

**2-9-30. Definitions.**

As used in this article, the term:

(1) “Grain” means all products commonly classified as grain, including, but not limited to, wheat, corn, oats, barley, rye, field peas, soybeans, clover, and grain sorghum. The term does not include grain

which has been produced or packaged for purchase or distribution as seed.

(2) "Grain dealer" means any person, association, itinerant dealer, partnership, or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any grain purchased from the producer or his or her agent or representative, received on consignment from the producer or his or her agent or representative, or received to be handled on a net return basis from the producer.

(3) "On consignment" means any receipt or sale of grain for the account of a person other than the seller in which the seller acts as the agent for the owner.

(4) "Producer" means any producer of grain. (Ga. L. 1976, p. 512, § 1; Ga. L. 2013, p. 797, § 5/HB 268.)

**The 2013 amendment**, effective July 1, 2013, inserted " , but not limited to," in the first sentence of paragraph (1); and inserted "or her" twice in paragraph (2).

### 2-9-33. Issuance, renewal, and expiration of license.

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-36, he or she shall issue to an applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-34, a state license entitling the applicant to conduct business as a dealer in grain. A fee in an amount fixed by rule or regulation of the Commissioner at not less than \$100.00 nor more than \$150.00 per annum shall be charged for such license. All such licenses shall be renewed annually on or before June 30. Any license which is not renewed on or before such date shall expire on June 30. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1. (Ga. L. 1976, p. 512, § 5; Ga. L. 1985, p. 643, § 1; Ga. L. 1992, p. 2132, § 1; Ga. L. 2010, p. 9, § 1-6/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in the first sentence, inserted "or she"; in the middle of the second sentence, substituted "not less than \$100.00 nor more than \$150.00" for "not more than \$100.00"; and added the last sentence.

### 2-9-34. Bond — Required.

(a) Before any license is issued, the applicant shall make and deliver to the Commissioner a surety bond in the amount of 20 percent of the average of the highest dollar volume of grain purchases from producers made in any single month for each of the three preceding calendar years or such shorter period of years as the applicant has done business as a grain dealer, provided that the minimum amount of such bond shall be



\$20,000.00 and the maximum amount of such bond shall be \$300,000.00. If a licensed grain dealer operates his or her grain-dealing activities at more than one physical location, he or she shall furnish a surety bond for each location of grain-dealing activities, each bond to be computed as stated in this Code section and each bond to be subject to the minimum and maximum amounts stated in this Code section. The bonds shall be executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of "good standing" issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the Commissioner of Insurance to notify the Commissioner of Agriculture within 30 days. Such bonds shall be upon forms prescribed by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to the producers or their agents or representatives of the proceeds of all grain handled or sold by such dealer. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given, conforming with the requirements of this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing.

(b) In lieu of a surety bond, the Commissioner may accept a cash bond which shall be subject in all respects to the same claims and actions as would exist against a surety bond.

(c) If the surety bond or cash bond of a licensed grain dealer is canceled, the license of such grain dealer shall immediately be revoked by operation of law without notice or hearing. (Ga. L. 1976, p. 512, § 6; Ga. L. 1977, p. 245, § 2; Ga. L. 1981, p. 927, § 1; Ga. L. 1983, p. 3, § 3; Ga. L. 1983, p. 831, § 2; Ga. L. 1985, p. 643, § 2; Ga. L. 1999, p. 800, § 4; Ga. L. 2013, p. 797, § 6/HB 268.)

**The 2013 amendment**, effective July 1, 2013, substituted "\$300,000.00" for "\$150,000.00" at the end of the first sentence of subsection (a).

### **2-9-42.1. Publication of names, locations, and manner of payment by licensed grain dealers.**

The Commissioner may publish in print or electronically the names and locations of licensed grain dealers and the names and locations of those operations certifying that payment will be made on a cash or certified check basis. (Ga. L. 1981, p. 927, § 3; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in this Code section.

## CHAPTER 10

### MARKETING FACILITIES, ORGANIZATIONS, AND PROGRAMS

#### Article 1

#### Georgia Building Authority (Markets)

Sec.

2-10-1 through 2-10-39. [Repealed].

#### Article 2

#### Farmers' Markets

- 2-10-52. Definitions.  
2-10-53. Powers and duties of Commissioner generally.  
2-10-57. Authority of Commissioner to provide for safety and security at farmers' markets; police powers.

Sec.

- 2-10-59. License required to sell in farmers' markets; consent to inspection of property; removal from premises.  
2-10-60. Suspension or revocation of registration, license, or permit; procedure; enforcement of laws, regulations, or orders.  
2-10-62. Prohibited acts; penalty.

#### Article 4

#### Roadside Markets Incentive Program

2-10-130 through 2-10-140. [Repealed].

## ARTICLE 1

### GEORGIA BUILDING AUTHORITY (MARKETS)

#### 2-10-1 through 2-10-39.

Reserved. Repealed by Ga. L. 2008, p. 224, § 1, effective July 1, 2008.

**Editor's notes.** — This article was based on Ga. L. 1955, p. 224, §§ 1-8, 10-39; Ga. L. 1957, p. 3, § 1; Ga. L. 1964, p. 85, §§ 1-3; Ga. L. 1967, p. 652, § 1; Ga. L. 1967, p. 866, §§ 1-4; Ga. L. 1972, p. 1015, § 418; Ga. L. 1982, p. 3, § 2; Ga. L. 1983, p. 3, § 46; Ga. L. 1988, p. 426, § 1.

## ARTICLE 2

### FARMERS' MARKETS

#### 2-10-52. Definitions.

As used in this article, the term:

- (1) "Agricultural products" means fruits, vegetables, pecans, nuts, eggs, dairy products, forestry and horticultural products, fish, sea-

food, meat, poultry, and other such products of farm, field, and water, whether fresh, frozen, canned, or otherwise packaged.

(2) "False pack" means the topping or facing of containers with the best products exposed and poor products concealed underneath.

(3) "Farmers' market" means any place within this state where farmers or producers may sell, bring or send to sell, exhibit, or transship agricultural products; or where buyers may come to buy, inspect, or transport agricultural products; or where such products may be processed or stored for sale, either at wholesale or retail. This term shall include all real and personal property, buildings, warehouses, storage facilities, barns, exhibition halls, and other structures, facilities, utilities, parking areas, streets, tracks, and other appurtenances and facilities, including, but not limited to, restaurants, service stations, and other like facilities of every kind and character used or useful at such place in promoting the buying, selling, or exchange of agricultural products. Use of such facilities shall not be limited to the buying, selling, or exchange of agricultural products so long as their use promotes the buying, selling, or exchange of such agricultural products as determined by the Commissioner. This definition shall include and not prohibit the sale of grocery items or other items commonly sold or offered for sale in conjunction with the sale of agricultural products.

(4) "Lease" means the creation of a written instrument (a lease) under the terms and conditions of which one party (lessor) out of its own estate grants and conveys to another party or parties (lessee or lessees) an estate for years retaining a reversion in itself after such grant and conveyance.

(4.1) "License" means revocable written permission from the Commissioner on a form prescribed by him or her whereby a person or entity has limited authority to enter the property of a farmers' market to offer for sale and sell sundry items at such market. Such a license is a mere privilege and does not confer upon the licensee any title, interest, or estate in any such market, its premises, or any space thereof.

(5) "Person" means any individual, limited or general partnership, association, firm, company, or corporation.

(6) "Real property" means both improved and unimproved real property and shall also include space in and on the real property.

(7) "Rent" means the creation of a written instrument (a rental agreement) the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only a usufruct.



(8) “Day,” “month,” and “year” means “calendar day,” “calendar month,” and “calendar year.”

(9) “State” means the State of Georgia. (Ga. L. 1981, p. 1354, §§ 3, 14; Ga. L. 1990, p. 320, § 1; Ga. L. 2004, p. 1066, § 1.)

**The 2004 amendment**, effective July 1, 2004, added paragraph (4.1).

## **2-10-53. Powers and duties of Commissioner generally.**

The Commissioner of Agriculture is charged with the duty of establishing, operating, and maintaining farmers’ markets and is charged with the responsibility of enforcing this article. In addition to any other powers conferred on him by this article, he may:

(1) Investigate methods and practices in connection with the production, handling, standardizing, grading, classifying, sorting, weighing, packing, transporting, storing, inspecting, and sale of agricultural products of all kinds within the state and all matters relevant thereto;

(2) Gather, formulate, and disseminate, in such form and at such times as he deems advisable, information relating to the matters included within paragraph (1) of this Code section;

(3) Disseminate, in such form and at such times as he deems advisable, information relating to market conditions, including, but not limited to, the supply, demand, and prices for all agricultural products and such other information as may benefit the producers, purchasers, and consumers of this state;

(4) Ascertain sources of supply of agricultural products and publish in print or electronically the names and addresses of producers and consignors thereof;

(5) Assist and advise in the organization and the operation of cooperatives and other associations in order to improve relations and services among producers, distributors, and consumers;

(6) Investigate delays, embargoes, conditions, practices, charges, and rates in the transportation and handling of agricultural products and, when deemed necessary, cause proceedings to be instituted before the proper authority or tribunal to improve and adjust same and cause the proper proceedings to be instituted to prevent unlawful combinations or agreements in restraint of trade or the fixing of prices;

(7) Take such steps as he deems advisable to prevent the waste or spoilage of agricultural products;

(8) Secure the cooperation and assistance of the United States Department of Agriculture or any other agency or department of the United States or of other states;

(9) Secure the cooperation and assistance of the other departments and agencies of this state, the University of Georgia, the other colleges and universities of the University System of Georgia, and other organizations that may be of assistance; and

(10) Take such other measures as shall be proper for carrying out the purposes of this article. (Ga. L. 1917, p. 77, § 3; Code 1933, § 5-204; Ga. L. 1935, p. 369, §§ 2-4, 13; Ga. L. 1956, p. 215, § 1; Ga. L. 1959, p. 242, § 1; Ga. L. 1981, p. 1354, §§ 4, 5; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted "in print or electronically" in paragraph (4).

## **2-10-57. Authority of Commissioner to provide for safety and security at farmers' markets; police powers.**

(a) The Commissioner is authorized to provide for safety and security at the farmers' markets and to make such rules and regulations as are necessary for this purpose. The Commissioner is vested with police powers to enforce this article, rules and regulations promulgated pursuant to this article, and all state laws that govern and control farmers' markets.

(b)(1) The Commissioner is authorized to employ, designate, deputize, and delegate to employees of the department the authority to exercise the police powers provided under subsection (a) of this Code section at the Atlanta State Farmers' Market in Forest Park. Employees who have been so designated by the Commissioner and who have been certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the course of training required by Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," are authorized to:

(A) Carry firearms authorized or issued by the Commissioner while in the performance of their duties;

(B) Exercise arrest powers;

(C) Enforce the law and order at the farmers' market;

(D) Order and escort off of the farmers' market those persons who are in trespass and remain in trespass by selling produce or other products without a current license or who are otherwise in violation of this article or rules and regulations promulgated pursuant to this article;

(E) Serve and execute warrants;

(F) Authorize to be towed vehicles that;

(i) Park in designated fire lanes; or

(ii) Are not properly licensed under state law or the law of the state of registration and remain parked on the farmers' market without authorization; and

(G) Enter upon and inspect all property owned, leased, rented, controlled, or used at the farmers' market by persons who hold or have applied for licenses under this article for the purpose of determining compliance with the provisions of this article and other laws the administration or enforcement of which is the responsibility of the Commissioner.

(2) From funds appropriated or available to the department, the Commissioner is authorized to provide motor vehicles, uniforms, firearms, and any other equipment and supplies needed by employees of the department to carry out this subsection.

(c) This Code section shall not repeal, supersede, alter, or affect the power of any other law enforcement officer of this state or of any county, municipality, or other political subdivision of this state to enforce the laws of this state on the premises of farmers' markets. At the request of the Commissioner, it shall be the duty of all state, county, municipal, and other law enforcement officers in this state to enforce and to assist the Commissioner and the employees and agents of the department in the enforcement of this article. (Ga. L. 1976, p. 678, § 3; Ga. L. 1981, p. 1354, § 9; Ga. L. 2006, p. 899, § 1/HB 1404.)

**The 2006 amendment**, effective May 5, 2006, designated the previously existing provisions as subsection (a); added the

second sentence in subsection (a); and added subsections (b) and (c).

## **2-10-59. License required to sell in farmers' markets; consent to inspection of property; removal from premises.**

(a) In order that the department may better manage the farmers' markets authorized by this article and to thereby facilitate the use of such farmers' markets by the citizens of this state, all persons and their employees, agents, and designees desiring to sell or to offer for sale any items at any farmers' market which charges a gate fee must first obtain a license for this purpose from the Commissioner. A license may be refused, suspended, or revoked in accordance with Code Section 2-10-60.

(b) By applying for a license or by operating under such license, the applicant or licensee, as the case may be, gives express consent for



authorized representatives of the Commissioner to enter upon and inspect all property owned, leased, rented, controlled, or used at the farmers' market by the applicant or licensee.

(c) The license required by this Code section is in addition to all other applicable licensing laws and shall not constitute an exemption or waiver thereof.

(d) Any person who enters upon the premises of a farmers' market to sell or offer for sale any items at such market without the license required by subsection (a) of this Code section, if applicable, shall be subject to removal immediately from the farmers' market. (Ga. L. 1976, p. 678, § 1; Ga. L. 1981, p. 1354, § 11; Ga. L. 2004, p. 1066, § 2.)

**The 2004 amendment**, effective July 1, 2004, in the first sentence of subsection (a), substituted "that the department may" for "to" near the beginning and in-

serted "and their employees, agents, and designees"; deleted "his" preceding "express consent" in the middle of subsection (b); and added subsection (d).

## **2-10-60. Suspension or revocation of registration, license, or permit; procedure; enforcement of laws, regulations, or orders.**

Any other provision of this title or Article 1 of Chapter 13 of Title 50 to the contrary notwithstanding:

(1) When the Commissioner, either through investigation or otherwise, has determined that any person has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is prohibited by any provision of this article or rule promulgated in support of this article governing activities for which registration with or a license or permit from the department is required, whether or not such person has so registered or obtained such a license or permit, the Commissioner may issue an administrative order, if he or she deems it to be in the public interest or necessary for the protection of the citizens of this state, prohibiting such person from continuing such act, practice, or transaction or suspending or revoking any such registration, license, or permit held by such person. The administrative order shall be final and effective ten days after issuance. The administrative order and notice of right to a hearing shall be served in person by the Commissioner or his or her agent or by certified mail or statutory overnight delivery, return receipt requested. The person or persons to whom the administrative order is issued may within ten days of issuance petition the department for a hearing. A petition for hearing shall be deemed filed on the date the department receives such petition, or when mailed by first class mail, proper postage attached, properly addressed directly to the department, whichever date first occurs. The petitioner shall simultaneously serve a copy of

such petition by certified mail, overnight mail, or personal service upon the Attorney General. If the person timely petitions the department for a hearing, the administrative order shall be stayed pending any administrative hearing until a final decision is rendered by the Commissioner. The administrative hearing shall be the forum in which the licensee may demonstrate that at the time of any alleged violation the licensee was in full compliance with the law;

(2) If the Commissioner has reasonable cause to believe that an act, practice, or transaction is occurring or is about to occur, and that such act, practice, or transaction would constitute an imminent peril to the public safety or welfare requiring emergency action, the Commissioner may issue an emergency order to be effective immediately. The emergency order shall contain findings to such effect and reasons for the determination, along with notice of right to a hearing. The person or persons to whom the emergency order is issued may within five days of issuance petition the department for a hearing on the administrative order. If such person timely petitions the department for a hearing, the administrative order shall be stayed pending any administrative hearing until a final decision is rendered by the Commissioner;

(3) Upon a timely request for hearing, the Commissioner shall schedule a hearing and appoint or designate a hearing officer to conduct the hearing for the taking of evidence and the issuance of a decision;

(4) Except where in conflict with the express provisions of this Code section and the reasonable implication of such provisions, the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," relating to contested cases shall be applicable to the actions of the Commissioner taken pursuant to this Code section and to the conduct and judicial review of any hearings held as a result thereof;

(5) The Commissioner may institute actions or other legal proceedings in any superior court of proper venue as may be required for the enforcement of any law or regulation governing activities for which registration with or a license or permit from the department is required;

(6) The Commissioner may prosecute an action in any superior court of proper venue to enforce any order made by him or her pursuant to this Code section; and

(7) In cases in which the Commissioner institutes an action or other legal proceeding or prosecutes an action to enforce his or her order, the superior court may, among other appropriate relief, issue a temporary restraining order or a preliminary, interlocutory, or per-

manent injunction restraining or enjoining persons and those in active concert with them from engaging in any acts, practices, or transactions prohibited by orders of the Commissioner or any law or regulation governing activities for which registration with or a license or permit from the department is required. In any such action, it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law. (Ga. L. 1959, p. 242, § 7; Ga. L. 1976, p. 678, § 2; Ga. L. 1980, p. 572, §§ 1, 2; Ga. L. 1981, p. 1354, § 12; Ga. L. 2000, p. 1589, § 3; Ga. L. 2004, p. 1066, § 3.)

**The 2004 amendment**, effective July 1, 2004, rewrote this Code section. Administrative Law, see 57 Mercer L. Rev. 1 (2005).

**Law reviews.** — For annual survey of

## 2-10-62. Prohibited acts; penalty.

(a) It shall be unlawful for any person on a farmers' market to:

(1) Engage in deceptive or dishonest trade practices;

(2) Do any act or use any language insulting to another tenant or customer; intimidate a shopper into purchasing his or her products; attempt to fix the price of products of any other farmer, vendor, or merchant; or circulate false reports tending to upset or destroy the operation of the market;

(3) Use any profane, abusive, or discourteous language on the market;

(4) Break, deface, or destroy any part of a building upon the market; interfere with electrical fixtures or wiring; or do any act tending to destroy the physical properties of the market;

(5) Move any cull agricultural products from any farmers' market for any purpose other than use as garbage or livestock feed or for dumping;

(6) Sell, offer, or expose for sale any products not meeting the requirements of the laws of this state relating to weights and measures;

(7) Use any false pack;

(8) Sublet any stall or space without the express written approval of the Commissioner;

(9) Fail or refuse to remove any vehicle or property upon direction of the farmers' market manager;

(10) Erect any facility or structure upon a farmers' market without the express written approval of the Commissioner; or



- (11) Sell or offer for sale any items at a farmers’ market without the license required by subsection (a) of Code Section 2-10-59, if applicable.
- (b) Any person who violates any provision of this Code section shall be guilty of a misdemeanor. (Ga. L. 1981, p. 1354, § 14; Ga. L. 2004, p. 1066, § 4.)

**The 2004 amendment**, effective July 1, 2004, in subsection (a), inserted “or her” in the middle of paragraph (a)(2), deleted “or” at the end of paragraph (a)(9), substituted “; or” for a period at the end of paragraph (a)(10), and added paragraph (a)(11).

ARTICLE 4

ROADSIDE MARKETS INCENTIVE PROGRAM

**2-10-130 through 2-10-140.**

Repealed by Ga. L. 2013, p. 670, § 1/SB 87, effective July 1, 2013.

**Editor’s notes.** — This article was based on Ga. L. 1967, p. 476, § 1-11.

CHAPTER 11

SEEDS AND PLANTS

Article 2		Sec.	
<b>Sale and Transportation of Seeds</b>			
Sec.			fication of seeds and plants; liability for damages resulting from certification work; immunity.
2-11-25.	Powers and duties of Commissioner — Generally.		
2-11-26.	Powers and duties of Commissioner — Licensing authority; penalties.		<b>Article 4</b>
2-11-35.	Local regulation prohibited.		<b>Seed Arbitration Council</b>
<b>Article 3</b>		2-11-73.	Filing complaint; fee; procedure.
<b>Certification of Seeds and Plants</b>			
2-11-52.	Designation of agency for certi-		

## ARTICLE 2

## SALE AND TRANSPORTATION OF SEEDS

**2-11-25. Powers and duties of Commissioner — Generally.**

The duty of enforcing this article and the carrying out of its provisions and requirements shall be vested in the Commissioner of Agriculture, who may act through his or her authorized agents. He shall have authority:

(1) To sample, test, make analysis of, and inspect any seed transported, sold, or offered or exposed for sale within this state for planting purposes, at such time and place and to such extent as may be deemed necessary to determine whether such seed is in compliance with this article;

(2) To enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected therewith subject to this article and rules and regulations promulgated hereunder;

(3) To issue and enforce a written or printed “stop sale” order to the person or vendor of any seed which is in violation or is believed to be in violation of any of the provisions of this article or rules and regulations promulgated hereunder;

(4) To furnish adequate facilities for testing seed and to employ qualified persons for making such tests;

(5) To publish in print or electronically or cause to be published the results of the examination, analysis, and testing of any agricultural or vegetable seed sampled in accordance with this article, together with any other information that the Commissioner may deem advisable;

(6) To provide that any person in this state shall have the privilege of submitting seed samples for testing, subject to the charges made for samples submitted as prescribed in rules and regulations promulgated under this article; provided, however, that seed samples shall be tested without charge for farmers who do not have a seed license; and

(7) To cooperate with the United States Department of Agriculture in the enforcement of the Federal Seed Act. (Ga. L. 1941, p. 497, § 5; Ga. L. 1956, p. 217, § 7; Ga. L. 1996, p. 1151, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in paragraph (5).

## **2-11-26. Powers and duties of Commissioner — Licensing authority; penalties.**

(a) For the purpose of carrying out this article, the Commissioner, who may act through his or her authorized agents, is authorized to issue a license to each retail and wholesale seed dealer, such license to be applied for by each seed dealer upon forms furnished for such purpose. A separate license shall be required for each point of sale, from which seed are sold, offered for sale, or exposed for sale. Out-of-state wholesale and retail seed dealers who sell or ship seed into this state shall obtain a license in the same manner. Such licenses shall be renewable in August of every third year following issuance. A fee in an amount fixed by rule or regulation of the Commissioner at not less than \$70.00 nor more than \$100.00 per annum shall be charged for such license. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) The Commissioner may enter an order imposing one or more of the following penalties against any person who violates any of the provisions of this chapter or the rules promulgated under this article or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the Commissioner or the Commissioner’s agent in the performance of his or her duty in connection with the provisions of this article:

(1) Issuance of a warning letter;

(2) Imposition of an administrative fine not more than \$1,000.00 per occurrence, suspension of a license, or both; or

(3) Revocation of the seed dealer’s license.

Actions stated in paragraphs (2) and (3) of this subsection shall be preceded by a departmental hearing to consider evidence that the licensee has violated this article or any rule or regulation promulgated under this article.

(c) No person who has not complied with this Code section shall sell or offer for sale any seed within this state. (Ga. L. 1956, p. 217, §§ 7, 12; Ga. L. 1996, p. 1151, § 1; Ga. L. 2010, p. 9, § 1-7/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in subsection (a), deleted the former last sentence, which read: “Seed

dealer license fees shall be established by rule promulgated under this article.”, and added the last two sentences.



**2-11-35. Local regulation prohibited.**

(a) No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the labeling, packaging, sale, storage, transportation, distribution, notification of use, or use of seeds.

(b) This Code section shall in no way prohibit or impair the legal right of any county, municipal corporation, consolidated government, or other political subdivision of this state to issue business licenses or to make zoning decisions. (Code 1981, § 2-11-35, enacted by Ga. L. 2005, p. 45, § 1/SB 87.)

**Effective date.** — This Code section became effective July 1, 2005.

**ARTICLE 3****CERTIFICATION OF SEEDS AND PLANTS****2-11-52. Designation of agency for certification of seeds and plants; liability for damages resulting from certification work; immunity.**

In order to execute the policy stated in Code Section 2-11-50, the dean of the College of Agricultural and Environmental Sciences of the University of Georgia is authorized to provide for seed, plant, and variety certification and labeling. The dean shall designate a certifying agency, provided that such designee must be in good standing with the Association of Official Seed Certifying Agencies. The College of Agricultural and Environmental Sciences of the University of Georgia shall not be held responsible for any claim, debt, obligation, or damage of any kind to any person in conducting certification work or in the work of the certifying agent. The certifying agency so designated by the dean shall, along with its employees, be immune from liability to the same extent as the state and state officers and employees under Article 2 of Chapter 21 of Title 50, “The Georgia Tort Claims Act.” (Ga. L. 1956, p. 16, § 3; Ga. L. 1995, p. 10, § 2; Ga. L. 1996, p. 1151, § 2; Ga. L. 2012, p. 1129, § 1/SB 390.)

**The 2012 amendment**, effective July 1, 2012, substituted “a certifying agency, provided that such designee” for “the Georgia Crop Improvement Association, Inc., as certifying agency, provided that the Georgia Crop Improvement Associa-

tion, Inc.,” in the second sentence and added the last sentence.

**Law reviews.** — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

ARTICLE 4  
SEED ARBITRATION COUNCIL

RESEARCH REFERENCES

**Am. Jur. Proof of Facts.** — Bias of Arbitrator, 2 POF2d 709.

**2-11-73. Filing complaint; fee; procedure.**

(a) When any farmer or seed purchaser alleges to have been damaged by the failure of any agricultural, flower, tree, shrub, or vegetable seed, except for vegetable and flower seed in packets weighing less than one pound for use in home gardens or household plantings, to conform to or perform as represented by the label required to be attached to such seed under Code Section 2-11-22 or by warranty or as a result of negligence, as a prerequisite to the purchaser's right to maintain a legal action against the seller, the purchaser shall submit a complaint against the seller alleging the damages sustained or to be sustained and shall file such complaint with the Commissioner in time for the seed, crop, or plants to be inspected to determine if the alleged deficiencies warrant arbitration. Whenever any farmer or commercial fruit or nut tree purchaser alleges to have been damaged by the failure of any commercial fruit or nut tree to be the variety represented by the label or invoice or by warranty or as the result of negligence, as a prerequisite to the purchaser's right to maintain a legal action against the seller, the purchaser shall submit a complaint against the seller alleging the damages sustained or to be sustained and shall file such complaint with the Commissioner in time for the trees to be inspected to determine if the alleged deficiencies warrant arbitration. Upon receipt, the Commissioner shall send a copy of the complaint to the seller by registered or certified mail or statutory overnight delivery.

(b) A filing fee of \$75.00 shall be paid to the Commissioner with each complaint filed. Such fee shall be recovered from the seller upon recommendation of the Seed Arbitration Council. The filing fee shall be forfeited if the complaint is independently settled between the purchaser and seller prior to the informal hearing scheduled by the council. Such independent settlement serves to close the file on the complaint.

(c) Within ten days after the receipt of a copy of the complaint, the seller shall file with the Commissioner a response to said complaint. Upon receipt, the Commissioner shall send a copy of the response to the purchaser by registered or certified mail or statutory overnight delivery.

(d) Upon gathering the complaint and the response, the Commissioner shall refer the complaint and the response to the Seed Arbitra-

tion Council as provided in Code Section 2-11-75 for investigation, informal hearing, findings, and recommendations on the complaint.

(e) Upon receipt of findings and recommendations of the Seed Arbitration Council, the Commissioner shall transmit said items to the purchaser and seller by registered or certified mail or statutory overnight delivery.

(f) The purchaser and seller shall give written notice to the Commissioner of the acceptance or rejection of the council’s recommendations within 30 days of the date the decision is mailed to the purchaser and seller. (Code 1981, § 2-11-73, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1996, p. 1151, § 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 1129, § 2/SB 390.)

**The 2012 amendment**, effective July 1, 2012, in subsection (a), substituted “in time for the seed, crop, or plants to be inspected to determine if the alleged deficiencies warrant arbitration” for “within ten days after the alleged defect or violation becomes apparent to allow inspection of the alleged deficiencies if deemed nec-

essary” at the end of the first sentence, and substituted “in time for the trees to be inspected to determine if the alleged deficiencies warrant arbitration” for “within ten days after the alleged defect or violation becomes apparent to allow inspection of the alleged deficiencies if deemed necessary” at the end of the second sentence.

CHAPTER 12

FERTILIZERS, LIMING MATERIALS, AND SOIL AMENDMENTS

Article 1		Sec.	
Fertilizers			annual renewal, fees, revocation; registration of products; application, fees, cancellation.
Sec.			
2-12-4.	Licensing requirements generally; fees; renewal; contents.		
2-12-8.	Inspection fees; quarterly report; collection penalty; effect of failure to file report and pay assessment.		
2-12-21.	Local regulation prohibited.		
Article 2			
Liming Materials			
2-12-43.	Licenses required; application,		
		2-12-73.	Registration required; proof of claims or value; fee.
Article 3			
Soil Amendments			



ARTICLE 1  
FERTILIZERS**2-12-4. Licensing requirements generally; fees; renewal; contents.**

(a) No person whose name appears upon the label of a fertilizer shall distribute that fertilizer in Georgia until a fertilizer license has been obtained from the Commissioner. All licenses expire on the thirtieth day of June each year. The license fee shall be \$100.00 per year and must be renewed annually with fees paid by July 1 of each year. If the license renewal fee is not paid by July 1, the applicable license fee shall increase in the manner prescribed by regulation. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) An application for license shall be made on forms furnished by or otherwise acceptable to the Commissioner and shall include:

(1) The name and address of the licensee;

(2) The name and address of each production location in the state. The licensee shall inform the Commissioner in writing of any additional production locations established during the period of the license; and

(3) Any other information as prescribed by regulation.

(c)(1) No licensee shall distribute in this state a specialty fertilizer until it is registered with the Commissioner by the licensee whose name appears on the label, provided that custom-mixed specialty fertilizer shall not be required to be registered. An application for registration for each brand of each grade of specialty fertilizer shall be made on a form furnished by or otherwise acceptable to the Commissioner. Labels for each brand of each grade shall accompany the application. For all specialty products sold in container sizes of ten pounds or less, the annual registration fee shall be \$60.00 for each brand of each grade. Such fee shall be submitted with the registration and a renewal fee of \$60.00 shall be due each July 1.

(2) If the registration renewal fee is not paid by July 1, the registration fee shall increase in the manner prescribed by regulation. No registration fee is required on specialty products sold in container sizes of over ten pounds. Upon the approval of the application for registration by the Commissioner, a copy of the registration shall be furnished to the applicant. Such registration shall be considered permanent so long as no changes or deviations are made in the labels of such products and the required registration fee is paid.

(3) The application for registration shall include the following information:

- (A) The brand and grade;
- (B) The guaranteed analysis;
- (C) The sources of all plant nutrients;
- (D) The name and address of the licensee;
- (E) The net weight or weights; and
- (F) Any other information as prescribed by regulation. (Code 1981, § 2-12-4, enacted by Ga. L. 1997, p. 1271, § 1; Ga. L. 2010, p. 9, § 1-8/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in subsection (a), substituted “\$100.00 per year” for “\$50.00 per year,” in the third sentence and added the last

sentence; and, in paragraph (c)(1), substituted “\$60.00” for “\$50.00” in the fourth and fifth sentences.

**2-12-8. Inspection fees; quarterly report; collection penalty; effect of failure to file report and pay assessment.**

(a) There shall be paid to the Commissioner for all fertilizer distributed in this state to nonlicensees an inspection fee at the rate of 60¢ per ton, provided that sales or exchanges between licensees and sales of containers of ten pounds or less are exempted from such fee; and provided, further, that the Commissioner may exempt by regulation certain other types of fertilizer from the inspection fee, when deemed appropriate. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b)(1) Each licensee distributing fertilizer in this state shall file with the Commissioner a quarterly report of the total tons of fertilizer distributed by such licensee in the state to nonlicensees for the quarterly period ending on the last day of March, June, September, and December. This and such other information as the Commissioner may require by regulation shall be supplied on forms furnished by or acceptable to the Commissioner. A quarterly tonnage report is required even if no reportable tonnage has been sold, provided that licensees which only distribute specialty fertilizer in containers of ten pounds or less shall not be required to submit these quarterly reports.

(2) The report shall be due on or before 30 days following the close of the filing period, and the inspection fee at the rate stated in subsection (a) of this Code section shall be included with the report. If the tonnage report is not filed and the payment of inspection fees is not made within 30 days after the end of the specified filing period, a penalty fee of 10 percent of the amount due or \$10.00, whichever is

greater, shall be assessed against the licensee and added to the amount due.

(3) A report not filed for six months or a fee or an assessed penalty which remains unpaid for six months shall constitute cause for the revocation of all registrations and licenses. Any fees owed shall constitute a debt to be collected by the Commissioner and may become the basis for legal action against the licensee.

(c) When more than one person is involved in the distribution of a fertilizer, the licensee who finally distributes a fertilizer to a nonlicensee shall be responsible for reporting the tonnage and paying the inspection fees. (Code 1981, § 2-12-8, enacted by Ga. L. 1997, p. 1271, § 1; Ga. L. 1998, p. 128, § 2; Ga. L. 2010, p. 9, § 1-9/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in subsection (a), substituted “60¢” for “30¢” in the first sentence and added the last sentence.

## 2-12-21. Local regulation prohibited.

(a) No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the registration, labeling, packaging, sale, storage, transportation, distribution, use, or application of fertilizer.

(b) This Code section shall in no way prohibit or impair the legal right of any county, municipal corporation, consolidated government, or other political subdivision of this state to issue business licenses or to make zoning decisions. (Code 1981, § 2-12-21, enacted by Ga. L. 2005, p. 1030, § 1/SB 88.)

**Effective date.** — This Code section became effective July 1, 2005.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2005, Code Section 2-12-22, as enacted by Ga. L. 2005, p. 1030, § 1, was redesignated as Code Section 2-12-21.

**Editor’s notes.** — Ga. L. 1997, p. 1271,

§ 1, repealed former Code Section 2-12-21, relating to notice of violations and administrative hearings. The former Code section was based on Ga. L. 1960, p. 916, §§ 19, 26; Ga. L. 1970, p. 609, § 16; Code 1981, § 2-12-22; Code 1981, § 2-12-21, as redesignated by Ga. L. 1989, p. 473, § 1.



## ARTICLE 2

## LIMING MATERIALS

**2-12-43. Licenses required; application, annual renewal, fees, revocation; registration of products; application, fees, cancellation.**

(a)(1) Each person whose name appears on the label of an agricultural liming material or who is responsible for guaranteeing such liming material must obtain a lime license from the Commissioner before distributing such product in Georgia.

(2) All licenses shall expire on June 30 of each year. The application for a license shall be submitted to the Commissioner on forms furnished by or otherwise acceptable to the Commissioner. Upon approval by the Commissioner, a copy of the license shall be furnished to the applicant. A new licensee shall pay a license fee of \$70.00. Thereafter, the license fee shall be based on the annual tonnage of liming materials sold in Georgia by the licensee in the previous 12 month period ending June 30, in accordance with the following:

(A) A \$100.00 annual fee for licensees having sales of 10,000 tons or more of liming materials in this state; or

(B) A \$70.00 annual fee for licensees having sales of less than 10,000 tons of liming materials in this state.

A lime license must be renewed annually and fees shall be received by July 1 of each calendar year, or the applicable license fee shall increase in the manner prescribed in the rules and regulations. Such license may be revoked for cause, after due notice and hearing, for a violation of this article or any rules or regulations adopted by the Commissioner pursuant to this article. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b)(1) No licensee shall distribute in this state an agricultural liming material until such product is registered with the Commissioner by the licensee whose name appears on the label. An application for registration for each brand and product name of liming materials shall be made on forms furnished by or otherwise acceptable to the Commissioner. Labels for each brand and product name shall accompany the application. The registration fee shall be \$70.00 per product. Such fee shall be submitted with the registration, and a renewal fee of \$70.00 shall be due each July 1. If renewal registration fees are not received by July 1 of each calendar year, the registration fee shall increase in the manner prescribed in the rules and regulations. Upon

approval by the Commissioner, a copy of the registration shall be furnished to the applicant. Such registrations shall be considered permanent so long as no changes or deviations are made in the labels of such products and so long as the registration fees are paid as specified in this article and the rules and regulations of the Commissioner. Such registrations may be canceled for cause, after due notice and hearing, for a violation of this article or any rules and regulations adopted by the Commissioner pursuant to this article.

(2) A distributor shall not be required to register any brand of agricultural liming material which is already registered under this article by another person, provided the label does not differ in any respect. (Code 1981, § 2-12-43, enacted by Ga. L. 1996, p. 1183, § 1; Ga. L. 1997, p. 143, § 2; Ga. L. 2010, p. 9, § 1-10/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in paragraph (a)(2), in the introductory paragraph, inserted "or otherwise acceptable to" in the second sentence and substituted "\$70.00" for "\$50.00" at the end of the fourth sentence, substituted

"\$70.00" for "\$50.00" near the beginning of subparagraph (a)(2)(B), and added the last sentence of the ending undesignated paragraph; and, in paragraph (b)(1), substituted "\$70.00" for "\$50.00" in the fourth and fifth sentences.

## ARTICLE 3

### SOIL AMENDMENTS

#### **2-12-73. Registration required; proof of claims or value; fee.**

(a) Every soil amendment distributed in this state shall be registered with the Commissioner on forms obtained from the Commissioner's office. The applicant for registration shall provide such information as the Commissioner may require by regulation after opportunity for public hearing.

(b) In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the soil amendment. If no specific claims are made, the Commissioner may require proof of the usefulness and value of the soil amendment. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that such data be developed from tests conducted under conditions identical to or closely related to those conditions present in this state. The Commissioner may reject any data not developed under such conditions and may rely on the advice of the University of Georgia College of Agricultural and Environmental Sciences experiment station personnel or other university personnel in evaluating data for registration.

(c) The registration fee shall be \$55.00 per year for each product. Registration shall expire on December 31, annually, unless an applica-

tion for renewal has been received prior to the expiration date. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1. (Ga. L. 1976, p. 359, § 4; Ga. L. 1995, p. 10, § 2; Ga. L. 2010, p. 9, § 1-11/HB 1055.)

The 2010 amendment, effective May 12, 2010, in subsection (c), substituted “\$55.00” for “\$50.00” in the middle of the first sentence and added the last sentence.

CHAPTER 13

COMMERCIAL FEEDS

Sec.		Sec.	
2-13-6.	License required for distribution; product registration; fees; refusal or cancellation of license or registration.	2-13-8.	Labeling requirements.

2-13-6. License required for distribution; product registration; fees; refusal or cancellation of license or registration.

(a) No person who manufactures a commercial feed within this state or whose name appears on the label of a commercial feed (guarantor), shall distribute a commercial feed in this state without first obtaining a commercial feed license from the Commissioner. No distributor may cause a commercial feed to be distributed in this state without first obtaining a commercial feed license; provided, however, that the Commissioner by rule or regulation may exempt certain distributors. Application for a commercial feed license shall be made on forms provided by the Commissioner that identify the manufacturer’s or guarantor’s or distributor’s name, place of business, and location of each manufacturing facility in the state and such other appropriate information as may be deemed necessary for enforcement of this chapter.

(b) All licenses shall expire on December 31 of each year. Licenses are not transferable and no credit or refund may be granted for licenses held for less than one full year. All commercial feed licenses must be renewed by January 1 of each year. The license fee shall be based upon the number of tons of commercial feed distributed in this state during the preceding 12 month period ending December 31, provided that tonnage of small-package products subject to registration as specified in subsection (d) of this Code section shall not be used in calculating the license fee due. The amount of the license fee shall be based upon the schedule as prescribed in the rules and regulations of the Commissioner but shall not be less than \$75.00 nor more than \$2,000.00 per annum.



Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(c) A commercial feed license must be renewed annually and fees shall be paid by January 31 of each calendar year, or the applicable license fee shall increase in the manner prescribed in the rules and regulations of the Commissioner.

(d) No licensee shall distribute in this state a pet food or a specialty pet food in packages of ten pounds or less which has not been registered. The application for registration shall be submitted to the Commissioner on forms furnished by or acceptable to the Commissioner. All registrations expire on December 31 of each year. An annual registration fee of an amount prescribed in the rules and regulations of the Commissioner is due by January 1. Such registration fee shall be \$40.00 per product registered, provided that the total of all such registration fees shall not exceed \$2,000.00 per annum for any licensee.

(e) Annual registration fees received after January 31 shall be subject to a delinquent penalty as prescribed in the rules and regulations of the Commissioner.

(f) The license and registration fees provided by this Code section shall not exceed a total amount of \$2,000.00 per annum for any licensee.

(g) The Commissioner is empowered to refuse the commercial feed license application or product registration of any firm not deemed to be in compliance with the provisions of this chapter and to cancel any commercial feed licenses or product registrations subsequently found not to be in compliance with this chapter, provided that no commercial feed license or product registration shall be refused or canceled unless the licensee has been given an opportunity to be heard before the Commissioner and to amend his application or take corrective action in order to comply with the requirements of this chapter.

(h) The Commissioner may request copies of labels and labeling in order to determine compliance with the provisions of this chapter. (Ga. L. 1945, p. 213, § 3; Code 1933, § 42-203, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 3; Ga. L. 2010, p. 9, § 1-12/HB 1055.)

**The 2010 amendment**, effective May 12, 2010, in subsection (b), substituted “\$75.00 nor more than \$2,000.00” for “\$50.00 nor more than \$1,000.00” in the fifth sentence and added the last sentence; in subsection (d), substituted “furnished by or acceptable to the Commissioner” for

“furnished by, or acceptable to, the Commissioner” in the second sentence and, in the last sentence, substituted “\$40.00” for “\$25.00” and substituted “\$2,000.00” for “\$1,000.00”; and, in subsection (f), substituted “\$2,000.00” for “\$1,000.00” near the middle.

**2-13-8. Labeling requirements.**

(a) A commercial feed, other than a customer-formula feed, shall be accompanied by a label bearing the following information:

(1) The net weight, which may be stated in metric units in addition to the required avoirdupois units;

(2) The product name and the brand name, if any, under which the commercial feed is distributed;

(3) The guaranteed analysis stated in such terms as the Commissioner, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods, such as the methods published by the Association of Official Analytical Chemists;

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, listed in descending order of predominance by weight; provided, however, that for any commercial feed other than equine feed, the Commissioner, by regulation, may permit the use of a collective term for a group of ingredients which performs a similar function or exempt such commercial feeds or any group thereof from this requirement of an ingredient statement if the Commissioner finds that such statement is not required in the interest of consumers;

(5) The name and the principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(6) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the Commissioner may require by regulation as necessary for their safe and effective use; and

(7) Such precautionary statements as the Commissioner, by regulation, determines are necessary for the safe and effective use of the commercial feed.

(b) A customer-formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

(1) The name and address of the manufacturer;

(2) The name and address of the purchaser;

(3) The date of delivery;

(4) The product name and brand name, if any, and the net weight of each commercial feed used in the mixture;

- (5) The net weight of every other ingredient used;
- (6) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Commissioner may require, by regulation, as necessary for their safe and effective use;
- (7) Such precautionary statements as the Commissioner, by regulation, determines are necessary for the safe and effective use of the customer-formula feed; and
- (8) If a drug-containing product is used:
- (A) The purpose of the medication (claim statement); and
- (B) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with regulations. (Code 1933, § 42-204, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 5; Ga. L. 2007, p. 165, § 1/HB 122.)

**The 2007 amendment**, effective July 1, 2007, in paragraph (a)(4), inserted “listed in descending order of predominance by weight,” near the beginning, substituted “provided, however, that for any commercial feed other than equine

feed,” for “provided that” near the middle, substituted “or” for “; or he may”, deleted a comma following “feeds” and following “thereof”, and substituted “the Commissioner” for “he” near the end.

## CHAPTER 14

### SALE OF AGRICULTURAL AND FOREST PRODUCTS

#### Article 3 Honeybees

- Sec.  
2-14-40. License required for sale of bees; fee; revocation of license.
- 2-14-43. Inspection of honeybee colonies; assistance in inspection.

#### Article 5 Timber Products

##### PART 2 TREATED TIMBER PRODUCTS

2-14-100 through 2-14-113. [Repealed].

#### Article 6 Vidalia Onions

- 2-14-131. Definitions.

- Sec.  
2-14-132.1. Vidalia onion trademark; royalties; license fees.
- 2-14-133. Rules and regulations; enforcement of article.
- 2-14-136. Marketing season shipping date.
- 2-14-137. Standards for grades.
- 2-14-138. Advisory panel created.

#### Article 7 Pick-your-own Farm Operations

- 2-14-150. Legislative declarations; intent.
- 2-14-151. Definitions.
- 2-14-152. Liability of farm owner or operator.
- 2-14-153. Warning notices required; effect of failure to comply with notice requirements.



ARTICLE 3  
HONEYBEES

**2-14-40. License required for sale of bees; fee; revocation of license.**

(a) All persons, firms, or corporations desiring to carry on as a business the sale of bees, queens, nuclei, etc., shall apply to the Commissioner of Agriculture as ex officio state entomologist for a license to do so. The application shall be accompanied by a fee of \$25.00. All fees so collected shall be turned over to the Office of the State Treasurer.

(b) The Commissioner, upon investigation of the party so applying and at his discretion, shall issue a license to the same. Such license shall be revoked by the Commissioner if the licensee fails to comply with this article or to carry out the rules and regulations established by the Commissioner.

(c) Any person, firm, or corporation attempting to carry on as a business the sale of bees, queens, nuclei, etc., without the license required by subsection (a) of this Code section or after such license has been revoked shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Code Section 2-14-47. (Ga. L. 1921, p. 260, § 1; Ga. L. 1931, p. 7, § 98A; Code 1933, §§ 5-901, 5-9929; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted "Office of the State Treasurer" for "Office of Treasury and Fis-

cal Services" at the end of the last sentence of subsection (a).

**2-14-43. Inspection of honeybee colonies; assistance in inspection.**

The Commissioner may require the registration and inspection of honeybee colonies as needed. Such inspections shall be made for the primary purpose of combating the spread of bee diseases, Africanized bees, or any other threat to honeybees in this state. All persons subject to this article shall be provided a reasonable opportunity to assist the inspectors in the inspection of such colonies. (Ga. L. 1966, p. 192, § 1; Code 1933, § 5-907, enacted by Ga. L. 1970, p. 197, § 1; Ga. L. 1990, p. 373, § 3; Ga. L. 2003, p. 794, § 1.)

**The 2003 amendment**, effective July 1, 2003, substituted the present provisions of this Code section for the former provisions which read: "Each colony of honeybees maintained by any person,

firm, or corporation in this state shall be inspected at least once each 18 months by an authorized bee inspector of the department. Such inspections shall be made for the primary purpose of combating the

spread of bee diseases, Africanized bees, or any other threat to honeybees in this state. It shall be the duty of any person, firm, or corporation not already registered as a bee colony owner to register with the Commissioner as a bee colony owner

within 30 days after acquiring a colony of honeybees. It shall also be the duty of all persons subject to this article to render assistance relative to the inspection of such colony."

## ARTICLE 5

### TIMBER PRODUCTS

#### PART 2

#### TREATED TIMBER PRODUCTS

#### 2-14-100 through 2-14-113.

Reserved. Repealed by Ga. L. 2012, p. 1098, § 1/SB 357, effective July 1, 2012.

**Editor's notes.** — This part was based 1982, p. 3, § 2; Ga. L. 2010, p. 9, on Ga. L. 1973, p. 1418, §§ 1-14; Ga. L. § 1-13/HB 1055.

## ARTICLE 6

### VIDALIA ONIONS

#### 2-14-131. Definitions.

As used in this article, the term:

(1) "Person" means an individual, partnership, corporation, association, or any other legal entity.

(2) "Shipping date" means the first day on which Vidalia onions may be shipped for sale.

(3) "Vidalia onion" means all onions of the Vidalia onion variety grown in the Vidalia onion production area.

(4) "Vidalia Onion Advisory Panel" means the advisory panel established pursuant to Code Section 2-14-138.

(5) "Vidalia onion production area" means a production area which encompasses only the State of Georgia or such lesser area as may be provided for pursuant to subsection (a) of Code Section 2-14-133.

(6) "Vidalia onion variety" means varieties of *Allium Cepa* of the hybrid yellow granex, granex parentage, or other similar varieties. The Commissioner may limit the usage of certain varieties or authorize the inclusion of new varieties based upon recommendations of the director of the Experiment Stations of the College of Agricul-

tural and Environmental Sciences of the University of Georgia. (Code 1981, § 2-14-131, enacted by Ga. L. 1986, p. 3, § 1; Ga. L. 1995, p. 710, § 1; Ga. L. 1996, p. 6, § 2; Ga. L. 2003, p. 461, § 1.)

**The 2003 amendment**, effective July 1, 2003, added paragraph (2), redesignated former paragraphs (1.1), (1.2), (2), and (3) as present paragraphs (3) through (6), respectively, and, in present para-

graph (4), substituted “Advisory Panel” for “Committee”, substituted “advisory panel” for “committee”, and substituted “Code Section 2-14-138” for “7 CFR part 955.20 (revised as of January 1, 1994)”.

**2-14-132.1. Vidalia onion trademark; royalties; license fees.**

The Commissioner of Agriculture is authorized to take all actions necessary and appropriate to create, register, license, promote, and protect a trademark for use on or in connection with the sale or promotion of Vidalia onions and products containing Vidalia onions. The Commissioner is authorized to impose and collect a royalty or license fee for the use of such trademark on products containing Vidalia onions or the packaging containing such onion products. Funds derived from such royalties and license fees shall be retained by the Commissioner and shall be used to promote Vidalia onions and to pay costs associated with monitoring the use of such trademark, prohibiting the unlawful or unauthorized use of the trademark, and enforcing rights in the trademark. (Code 1981, § 2-14-132.1, enacted by Ga. L. 2000, p. 1301, § 1; Ga. L. 2012, p. 731, § 1/HB 832.)

**The 2012 amendment**, effective July 1, 2012, deleted the former third sentence, which read: “Such royalty and license fee shall not exceed 0.5¢ for each six ounces, or portion thereof, of product in connec-

tion with all products with which such trademark is used.”

**Law reviews.** — For note on 2000 enactment of O.C.G.A. § 2-14-132.1, see 17 Ga. St. U. L. Rev. 1 (2000).

**JUDICIAL DECISIONS**

**Mandamus to require enforcement not appropriate.** — Growers were not entitled to mandamus relief to force the Georgia Department of Agriculture and Georgia Commissioner of Agriculture to enforce regulations allegedly prohibiting certain labels that were being used; mandamus could not be used to direct the way in which the Commissioner exercised the Commissioner’s discretion under

O.C.G.A. § 2-14-132.1 to protect trademark use or the Commissioner’s discretion under O.C.G.A. § 2-14-135(a), (b) to civilly enforce regulations promulgated under O.C.G.A. § 2-14-133(a) to promulgate regulations regarding labeling and marketing practices. *Bland Farms, LLC v. Ga. Dep’t of Agric.*, 281 Ga. 192, 637 S.E.2d 37 (2006).

**2-14-133. Rules and regulations; enforcement of article.**

(a) The Commissioner is authorized to prescribe rules or regulations which may include, but not necessarily be limited to, quality standards, grades, packing, handling, labeling, and marketing practices for the



marketing of onions in this state, including the requirements that all Vidalia onions be initially packed only in the Vidalia onion production area and that no Vidalia onion may be shipped from the Vidalia onion production area in bulk except as may be authorized by rule, and such other regulations as are necessary to administer properly this article. The Commissioner may also prescribe rules or regulations establishing a registration, inspection, and verification program for the production and marketing of Vidalia onions in this state and, after hearing and public comment, further limiting the Vidalia onion production area as defined in paragraph (5) of Code Section 2-14-131. Pursuant to such rules, regulations, and conditions as may be prescribed by the Commissioner, the Commissioner is authorized to grant variances in the production area requirements of this article to any producer who has produced in Georgia, marketed, and labeled onions of the Vidalia onion variety as Vidalia onions prior to January 31, 1986. Such rules or regulations may include within the definition of Vidalia onion variety as defined in paragraph (6) of Code Section 2-14-131 other hybrids or varieties of onions which may be developed and which have characteristics similar to the Vidalia onion variety. All onions sold must conform to the prescribed standards and grades and must be labeled accordingly.

(b) The Commissioner and his agents and employees are authorized to enter any premises or other property where onions are produced, stored, sold, offered for sale, packaged for sale, transported, or delivered to inspect such onions for the purpose of enforcing the provisions of this article and the rules and regulations promulgated under this article. (Code 1981, § 2-14-133, enacted by Ga. L. 1986, p. 3, § 1; Ga. L. 1995, p. 710, § 2; Ga. L. 2003, p. 461, § 2.)

**The 2003 amendment**, effective July 1, 2003, in subsection (a), deleted “of Agriculture” following “Commissioner” in the first sentence, substituted “paragraph (5)”

for “paragraph (2)” near the end of the second sentence, and substituted “paragraph (6)” for “paragraph (3)” in the fourth sentence.

## JUDICIAL DECISIONS

**Mandamus to require enforcement not appropriate.** — Growers were not entitled to mandamus relief to force the Georgia Department of Agriculture and Georgia Commissioner of Agriculture to enforce regulations allegedly prohibiting certain labels that were being used; mandamus could not be used to direct the way in which the Commissioner exercised the

Commissioner’s discretion under O.C.G.A. § 2-14-132.1 to protect trademark use or the Commissioner’s discretion under O.C.G.A. § 2-14-135(a), (b) to civilly enforce regulations promulgated under O.C.G.A. § 2-14-133(a) to promulgate regulations regarding labeling and marketing practices. *Bland Farms, LLC v. Ga. Dep’t of Agric.*, 281 Ga. 192, 637 S.E.2d 37 (2006).

**2-14-135. Civil penalties; injunctions.****JUDICIAL DECISIONS**

**Mandamus to require enforcement not appropriate.** — Growers were not entitled to mandamus relief to force the Georgia Department of Agriculture and Georgia Commissioner of Agriculture to enforce regulations allegedly prohibiting certain labels that were being used; mandamus could not be used to direct the way in which the Commissioner exercised the Commissioner's discretion under

O.C.G.A. § 2-14-132.1 to protect trademark use or the Commissioner's discretion under O.C.G.A. § 2-14-135(a), (b) to civilly enforce regulations promulgated under O.C.G.A. § 2-14-133(a) to promulgate regulations regarding labeling and marketing practices. *Bland Farms, LLC v. Ga. Dep't of Agric.*, 281 Ga. 192, 637 S.E.2d 37 (2006).

**2-14-136. Marketing season shipping date.**

The Commissioner may determine and announce a shipping date each year for the Vidalia onion marketing season in this state upon the recommendation of the Vidalia Onion Advisory Panel. Vidalia onions may be shipped prior to such date with a mandatory U.S. No. 1 grade certificate. The Vidalia Onion Advisory Panel shall survey the conditions of the Vidalia onion crop and recommend a shipping date for the marketing season to the Commissioner. (Code 1981, § 2-14-136, enacted by Ga. L. 1995, p. 710, § 3; Ga. L. 2003, p. 461, § 3.)

**The 2003 amendment**, effective July 1, 2003, in the first sentence, substituted "a shipping date" for "the opening date" and substituted "Advisory Panel" for "Committee" at the end; added the second

sentence; and, in the last sentence, substituted "Vidalia Onion Advisory Panel" for "committee" near the beginning and substituted "a shipping date for" for "an opening date of" near the end.

**2-14-137. Standards for grades.**

The standards for grades adopted by the U.S. Department of Agriculture, U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions, effective January 1, 1960, as amended March 18, 1962, and February 20, 1985 (7 C.F.R. 51.3195-51.3209), December 31, 1981, and U.S. Standards for Grades of Common Green Onions (7 C.F.R. 51.1055-51.1071) December 31, 1981, are adopted and shall be the standards for grades in this state, except that the Commissioner may establish tolerances or allowable percentages of U.S. Standards each season upon the recommendation of the Vidalia Onion Advisory Panel. (Code 1981, § 2-14-137, enacted by Ga. L. 1995, p. 710, § 4; Ga. L. 2003, p. 461, § 4; Ga. L. 2005, p. 60, § 2/HB 95; Ga. L. 2006, p. 72, § 2/SB 465.)

**The 2003 amendment**, effective July 1, 2003, substituted "Advisory Panel" for

"Committee" at the end of this Code section.

**The 2005 amendment**, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

**The 2006 amendment**, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted “February 20, 1985 (7 C.F.R. 51.3195-51.3209)” for “February 20, 1985, (7 C.F.R. 51.3195-51.3209)”.

**2-14-138. Advisory panel created.**

The Commissioner shall appoint a Vidalia Onion Advisory Panel, to consist of individuals involved in growing, packing, or growing and packing Vidalia onions; at least one county cooperative extension agent from the Vidalia onion production area; and any other person or persons selected by the Commissioner, for the purpose of rendering advice upon his or her request regarding the exercise of his or her authority pursuant to Code Sections 2-14-136 and 2-14-137. Members of the advisory panel shall receive no compensation for their service as such members. (Code 1981, § 2-14-138, enacted by Ga. L. 2003, p. 461, § 5.)

**Effective date.** — This Code section became effective July 1, 2003.

ARTICLE 7

PICK-YOUR-OWN FARM OPERATIONS

**Effective date.** — This article became effective April 28, 2001.

RESEARCH REFERENCES

**ALR.** — Excessiveness or adequacy of damages awarded for personal injuries resulting in death of persons engaged in farming, ranching, or agricultural labor, 46 ALR3d 733.

**2-14-150. Legislative declarations; intent.**

The General Assembly recognizes that persons who patronize farms specializing in pick-your-own agricultural products may incur injuries as a result of the risks involved in such activity. The General Assembly also finds that the state and its citizens derive numerous economic and personal benefits from such activity. The General Assembly finds, determines, and declares that this article is necessary for the immediate preservation of the public peace, health, and safety. It is, therefore, the intent of the General Assembly to encourage the direct sale of agricultural products from farmers to the general public by limiting the civil liability of farmers involved in such activity. (Code 1981, § 2-14-150, enacted by Ga. L. 2001, p. 1249, § 1.)



**Law reviews.** — For note on the 2001 12-5-153, see 18 Ga. St. U. L. Rev. 1 enactment of O.C.G.A. §§ 2-14-150 to (2001).

## **2-14-151. Definitions.**

As used in this article, the term:

(1) “Agricultural products” means Christmas trees, fruits, vegetables, pecans, nuts, horticultural products, and other such fresh farm products that are made available to the general public through pick-your-own farm operations.

(2) “Participant” means any person who enters the farm location, singly or with a group, for the purpose of harvesting fresh farm products from pick-your-own farm operations. (Code 1981, § 2-14-151, enacted by Ga. L. 2001, p. 1249, § 1.)

## **2-14-152. Liability of farm owner or operator.**

(a) Except as provided in subsection (b) of this Code section, the owner or operator of any farm specializing in pick-your-own agricultural products shall not be liable for an injury to or the death of a participant resulting from the inherent risks of harvesting agricultural products, and, except as provided in subsection (b) of this Code section, no participant or participant’s representative shall make any claim against, maintain an action against, or recover from an owner or operator, or any other person or entity for injury, loss, damage, or death of the participant resulting from any of the inherent risks of harvesting agricultural products.

(b) Nothing in subsection (a) of this Code section shall prevent or limit the liability of an owner or operator or any other person or entity if the owner or operator:

(1) Owns, leases, rents, or otherwise is in lawful possession and control of the land upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the owner or operator;

(2) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or

(3) Intentionally injures the participant.

(c) Nothing in subsection (a) of this Code section shall prevent or limit the liability of an owner or operator under liability provisions as set forth in the product liability laws. (Code 1981, § 2-14-152, enacted by Ga. L. 2001, p. 1249, § 1.)

**2-14-153. Warning notices required; effect of failure to comply with notice requirements.**

(a) Every owner and operator of a pick-your-own farm operation shall post and maintain white signs which contain the warning notice specified in subsection (b) of this Code section. Such signs shall be placed in a clearly visible location near the entrance of the farm. The warning notice specified in subsection (b) of this Code section shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an owner or operator shall contain in clearly readable print the warning notice specified in subsection (b) of this Code section.

(b) The signs and contracts described in subsection (a) of this Code section shall contain the following warning notice:

“Under Georgia law, an owner or operator of a pick-your-own farm location is not liable for an injury to or the death of a participant from the inherent risks of harvesting agricultural products, pursuant to Article 7 of Chapter 14 of Title 2 of the Official Code of Georgia Annotated.”

(c) Failure to comply with the requirements concerning warning signs and notices provided in this Code section shall not prevent an owner or operator from invoking the privileges of immunity provided by this article. (Code 1981, § 2-14-153, enacted by Ga. L. 2001, p. 1249, § 1.)

**CHAPTER 15**

**PACIFIC WHITE SHRIMP AQUACULTURE DEVELOPMENT**

Sec.	Sec.
2-15-1. (For effective date, see note.) Short title.	2-15-5. (For effective date, see note.) Registration required; penalty for failure to register.
2-15-2. (For effective date, see note.) Definitions.	2-15-6. (For effective date, see note.) Expiration and renewal of registrations.
2-15-3. Pacific White Shrimp Aquaculture Development Advisory Council created; membership; purpose; compensation; meetings and procedure [Repealed].	2-15-7. (For effective date, see note.) Content of applications for registration; registration fee.
2-15-4. (For effective date, see note.) Plan for development; requirement of plan; cooperation with colleges and universities.	2-15-8. (For effective date, see note.) Application for registration as admission of doing business in state.

Sec.		Sec.	
2-15-9.	(For effective date, see note.) Grounds for denial of registration; opportunity for hearing.		Rule-making authority; best management practices required.
2-15-10.	(For effective date, see note.) Revocation of registration; opportunity for hearing.	2-15-13.	(For effective date, see note.) Unlawful possession of pacific white shrimp; confiscation of illegal products.
2-15-11.	(For effective date, see note.) Evidence of registration; maintenance of list of registered persons.	2-15-14.	(For effective date, see note.) Inspection of premises; warrant for inspection.
2-15-12.	(For effective date, see note.)		

**Delayed effective date.** — This chapter becomes effective only upon the effective date of a specific appropriation of funds for purposes of this chapter as expressed in a line item of an appropriations Act enacted by the General Assembly. Funds were not appropriated at the 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013 sessions of the General Assembly.

**Editor’s notes.** — Ga. L. 1992, p. 1507, § 1, effective July 1, 1992, repealed and reserved the former chapter. The former chapter was based on Ga. L. 1989, p. 284, § 1, and Ga. L. 1992, p. 6, § 2. For present provisions as to aquaculture development, see § 27-4-251 et seq.

**2-15-1. (For effective date, see note.) Short title.**

This chapter may be cited as the “Georgia Pacific White Shrimp Aquaculture Development Act of 2004.” (Code 1981, § 2-15-1, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-2. (For effective date, see note.) Definitions.**

As used in this chapter, the term:

- (1) “Aquaculturalist” means a person or firm engaged in aquaculture.
- (2) “Aquaculture” means the extensive or intensive farming of aquatic animals and aquatic plants.
- (3) “Pacific white shrimp” means the species *Penaeus vannamei*. (Code 1981, § 2-15-2, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.



**2-15-3. Pacific White Shrimp Aquaculture Development Advisory Council created; membership; purpose; compensation; meetings and procedure.**

Reserved. Repealed by Ga. L. 2008, p. 1015, § 1, effective May 14, 2008.

**Editor's notes.** — This Code section was based on Code 1981, § 2-15-3, enacted by Ga. L. 2004, p. 948, § 2-1.

**2-15-4. (For effective date, see note.) Plan for development; requirement of plan; cooperation with colleges and universities.**

(a) There shall be a pacific white shrimp aquaculture program within the department.

(b) The department shall make a thorough study of pacific white shrimp aquaculture and the potential for development and enhancement of such aquaculture in the state. It shall be the duty of the department to develop, distribute, and, from time to time, amend a pacific white shrimp aquaculture development plan for the State of Georgia for the purpose of facilitating the establishment and growth of economically viable pacific white shrimp aquaculture enterprises in Georgia. Such plan shall include:

(1) An evaluation of Georgia's natural resources as they relate to pacific white shrimp aquaculture;

(2) An evaluation of pacific white shrimp and its potential for culture in Georgia;

(3) An identification of constraints to development of pacific white shrimp aquaculture in Georgia and recommendations on methods to alleviate such constraints;

(4) An identification of the role of the department in supporting the pacific white shrimp aquaculture industry, including an evaluation of existing physical and personnel resources and recommendations for allocation of additional resources where needed;

(5) A list of the resources, training programs, technical assistance, and other programs available to prospective pacific white shrimp aquaculturalists;

(6) Recommendations for implementation of the plan; and

(7) An identification of the role of other state and federal agencies in the development of the pacific white aquaculture industry.

(c)(1) To aid in performing its duties under this Code section, the department shall rely upon, to the extent feasible, the Georgia Center

for Aquaculture Development at Fort Valley State University as a state-wide center for providing information, conducting research and development, and technology transfer training on fresh-water and marine aquaculture in diverse production systems.

(2) Middle Georgia Technical College shall collaborate, to the extent feasible, with the Georgia Center for Aquaculture Development at Fort Valley State University on aquaculture training. (Code 1981, § 2-15-4, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-5. (For effective date, see note.) Registration required; penalty for failure to register.**

(a) Any person or firm engaged in pacific white shrimp aquaculture shall apply to the department for a pacific white shrimp aquaculture registration. The lawfully obtained pacific white shrimp of an aquaculturalist registered under this chapter shall be privately owned subject to regulation by the department; provided, however, any person selling pacific white shrimp without first obtaining a pacific white shrimp aquaculture registration shall be considered to be selling “wildlife” or “wild animals” and shall be subject to the provisions of Title 27 governing such sale.

(b) On and after January 1 of the calendar year following the year in which this chapter becomes effective, it shall be a misdemeanor for any person or firm to engage in pacific white shrimp aquaculture unless such person or firm is registered as provided by this chapter; except that this subsection shall not apply to the employees of a registered pacific white shrimp aquaculturalist. (Code 1981, § 2-15-5, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-6. (For effective date, see note.) Expiration and renewal of registrations.**

The department shall register persons engaged in pacific white shrimp aquaculture under the applicable provisions of this chapter. Such registration or any renewal thereof shall expire on December 31 of each even-numbered year following registration; provided, however, that any registration shall expire 30 days following any change in the status of any information required by the provisions of this chapter or by any rule or regulation adopted pursuant to this chapter to be reported to the department. The department shall issue to registrants

who update or renew their registration new certificates of registration for the full period of registration provided for in this Code section. (Code 1981, § 2-15-6, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-7. (For effective date, see note.) Content of applications for registration; registration fee.**

(a) All applications to the department for registration as a pacific white shrimp aquaculturalist shall:

(1) Designate an address in this state where the applicant can be personally served with legal process;

(2) Contain an appointment of an agent in this state for acceptance of service of legal process, together with the agent's address in this state; or

(3) Contain a designation of the Secretary of State for acceptance of service of legal process.

(b) A copy of such application shall be forwarded to the Secretary of State by the department.

(c) The Commissioner shall by rule or regulation establish a registration fee in such amount as is reasonable and necessary to cover administrative costs. (Code 1981, § 2-15-7, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, "is" was substituted for "it" in subsection (c). to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**Editor's notes.** — For information as

**2-15-8. (For effective date, see note.) Application for registration as admission of doing business in state.**

The filing of an application with the department for registration as a pacific white shrimp aquaculturalist shall constitute an admission by the applicant that the applicant is doing business in this state. (Code 1981, § 2-15-8, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.



**2-15-9. (For effective date, see note.) Grounds for denial of registration; opportunity for hearing.**

(a) The Commissioner may deny registration to:

(1) Any applicant with a criminal record;

(2) Any applicant who is found by the Commissioner to have violated any law or rule administered by the department or the Department of Natural Resources or any regulation or quarantine of the department or the Department of Natural Resources; or

(3) A corporation, when any of its officers has a criminal record or is found by the Commissioner to have violated any law administered by the department or the Department of Natural Resources or any regulation or quarantine of the department or the Department of Natural Resources.

(b) In the case of a partnership, all parties shall be considered applicants for the purpose of this Code section.

(c) No registration shall be denied under this chapter without opportunity for hearing in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 2-15-9, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-10. (For effective date, see note.) Revocation of registration; opportunity for hearing.**

The Commissioner may revoke any outstanding registration where the holder of the same or any officer or agent of the holder is found by the Commissioner to have violated any law or rule administered by the department or the Department of Natural Resources or any regulation or quarantine of the department or the Department of Natural Resources, provided that no registration shall be revoked under this Code section without opportunity for hearing in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 2-15-10, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-11. (For effective date, see note.) Evidence of registration; maintenance of list of registered persons.**

All registration certificates issued by the department shall be evidence of a registration. The department shall maintain a current list of

all persons registered under this chapter. (Code 1981, § 2-15-11, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-12. (For effective date, see note.) Rule-making authority; best management practices required.**

(a) The Commissioner shall make and publish in print or electronically such rules and regulations, not inconsistent with law, as are reasonable and necessary to carry out the purposes of this chapter.

(b) Such rules and regulations shall include, without limitation, best management practices that shall serve as protocols for the establishment and maintenance of responsible and sustainable pacific white shrimp aquaculture and for the protection of public health and safety, wildlife, and natural resources. By way of example only, such practices may cover site selection, site plans, stocking, disease importation management, escapement of eggs, fry, and adults, harvesting, transportation of product, effective management, food safety at the farm level, and reporting requirements. Compliance with such best management practices shall be a condition of any pacific white shrimp aquaculture registration certificate issued under this chapter. (Code 1981, § 2-15-12, enacted by Ga. L. 2004, p. 948, § 2-1; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment,** effective June 3, 2010, inserted “in print or electronically” in subsection (a). to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**Editor's notes.** — For information as

**2-15-13. (For effective date, see note.) Unlawful possession of pacific white shrimp; confiscation of illegal products.**

(a) It shall be unlawful for any person to have in his or her possession pacific white shrimp obtained from a pacific white shrimp aquaculturalist without a bona fide bill of sale or lading that provides the date of transaction, identifies the seller, and details at least two of the following three criteria for pacific white shrimp: number, weight, or average length.

(b) It shall be unlawful to sell pacific white shrimp produced by aquaculture which shrimp the department has determined to have diseases or parasites that would be harmful to native wildlife populations, including without limitation any viruses that may be latent in exotics but problematic if introduced into indigenous stocks.

(c) Wholesale fish dealers or retail fish dealers properly licensed under Title 27 may sell pacific white shrimp obtained from a pacific white shrimp aquaculturalist registered under this chapter.

(d) The Commissioner may by rule or regulation prohibit, condition, or limit the importation, possession, or sale in this state of pacific white shrimp where the same are found to be harmful to endemic wildlife populations or where the importation, possession, or sale might introduce or spread disease or parasites, including without limitation any viruses that may be latent in exotics but problematic if introduced into indigenous stocks. The Commissioner shall consult with the commissioner of natural resources to determine conditions and limitations regarding importing pacific white shrimp to protect endemic wildlife populations from disease, parasites, or other harm.

(e) Any pacific white shrimp in the postlarval stage obtained for growout must be free of disease.

(f) Employees or agents of the department shall confiscate any pacific white shrimp imported, purchased, or acquired by any person in violation of this Code section or any rule or regulation of the Commissioner adopted pursuant to this Code section. (Code 1981, § 2-15-13, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor's notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

**2-15-14. (For effective date, see note.) Inspection of premises; warrant for inspection.**

(a) Any inspector or other person authorized to ascertain compliance with any provision of this chapter or any rule or regulation of the department pertaining to pacific white shrimp aquaculture may enter during normal business hours and inspect the premises of a pacific white shrimp aquaculturalist to determine whether such person is in compliance with the rules and regulations of the department.

(b) In the event any person refuses to give his or her consent to an inspection as provided in subsection (a) of this Code section, the Commissioner or any person authorized to make inspections may seek a warrant to make an inspection as provided in this subsection:

(1) Any application for an inspection warrant shall be made to a person who is a judicial officer within the meaning of Code Section 17-5-21;

(2) An inspection warrant shall be issued only upon cause and when supported by an affidavit particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is to be made. In addition, the



affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent. Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle;

(3) An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself or herself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void;

(4) An inspection pursuant to an inspection warrant shall be made between 8:00 A.M. and 6:00 P.M. of any day or at any time during operating or regular business hours. An inspection should not be performed in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judicial officer may expressly authorize a forcible entry where facts are shown which are sufficient to create a reasonable suspicion of a violation of this chapter or any rule or regulation promulgated pursuant to this chapter, which, if such violation existed, would be an immediate threat to health, safety, or welfare or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused and a warrant has been issued, the warrant may be executed without further notice to the owner or occupant of the particular place, dwelling, structure, premises, or vehicle to be inspected;

(5) It shall be unlawful for any person to refuse to allow an inspection pursuant to an inspection warrant issued as provided in this subsection. Any person violating this paragraph shall be guilty of a misdemeanor; and

(6) Under this subsection, an inspection warrant is an order, in writing, signed by a judicial officer, directed to the Commissioner or any person authorized to make inspections for the department, and commanding him or her to conduct any inspection authorized by any rules or regulations promulgated pursuant to this chapter.

(c) The provisions of Code Section 27-1-23 shall not be applicable to any person registered under this chapter. (Code 1981, § 2-15-14, enacted by Ga. L. 2004, p. 948, § 2-1.)

**Editor’s notes.** — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

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CHAPTER 18

GEORGIA TOBACCO COMMUNITY DEVELOPMENT BOARD

Sec.  
2-18-4. Powers of Office of Planning and Budget; funds.

2-18-4. Powers of Office of Planning and Budget; funds.

The board is attached to the Office of Planning and Budget for administrative purposes. Without limitation, the office shall provide such staff and other services as the board may need for its functions. Without detracting from the status of the board as a budget unit, the Office of Planning and Budget may expend its funds for purposes of the board as if such funds were appropriated directly to the board. (Code 1981, § 2-18-4, enacted by Ga. L. 1999, p. 721, § 1; Ga. L. 2001, p. 310, § 1.)

**The 2001 amendment,** effective April 18, 2001, substituted “Office of Planning and Budget” for “Department of Agriculture” in two places and substituted “office” for “department” at the beginning of the second sentence.

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CHAPTER 19

GEORGIA COTTON PRODUCERS INDEMNITY FUND

Sec.  
2-19-1. Enactment of chapter; purpose.  
2-19-5. Georgia Cotton Producers Indemnity Fund of 1999 created.  
2-19-5.1. “Cotton ginner” defined; payment of excess funds in indemnity fund; filing claims.

Sec.  
2-19-6. Stipulations on acceptance of indemnity payments; recovery of payments by the Commissioner.

**2-19-1. Enactment of chapter; purpose.**

This chapter is enacted pursuant to the authority granted to the General Assembly by Article III, Section VI, Paragraph II(a)(3) of the Constitution of the State of Georgia and section 1121 of the federal Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, as amended, and is for the purpose of creating an indemnity fund and making expenditures from such fund to indemnify cotton producers in this state for losses incurred in 1998 or 1999 from the loss of certain properly stored, harvested cotton. (Code 1981, § 2-19-1, enacted by Ga. L. 1999, p. 1062, § 1; Ga. L. 2001, p. 956, § 1.)

**The 2001 amendment**, effective April 27, 2001, inserted “as amended,” following “Public Law 105-277,” near the middle of this Code section.

**Editor’s notes.** — Ga. L. 2001, p. 956,

§ 5, not codified by the General Assembly, provides that: “if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent.”

**2-19-5. Georgia Cotton Producers Indemnity Fund of 1999 created.**

(a) There is created a fund to be known as the Georgia Cotton Producers Indemnity Fund of 1999. The Commissioner shall be the custodian of the fund, shall administer the fund, and may invest the resources of the fund in the same manner and fashion that an insurer authorized to issue contracts of life insurance is authorized to invest its resources.

(b) The fund shall consist of \$5 million of federal moneys received pursuant to section 1121 of the federal Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277; all moneys appropriated by the General Assembly as required by section 1121 of the federal Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, for the purpose of compensating claimants under this chapter; any other moneys made available to the fund; and any interest or earnings on such moneys accruing to the fund.

(c) All funds appropriated to or otherwise paid into the fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated or paid and shall not lapse.

(d) The Commissioner is authorized, subject to the limitations contained in this chapter, to disburse the appropriate indemnity payments to the persons eligible for such payments under this chapter from the Georgia Cotton Producers Indemnity Fund of 1999.

(e) Following the receipt of all claims, the investigation of each claim, as necessary, and the making of a determination that an award should



or should not be paid for each claim filed, the Commissioner is authorized to draw warrants upon the Georgia Cotton Producers Indemnity Fund of 1999 to pay the indemnity amounts granted to eligible recipients from such fund. If the total amount of all claims approved for payment exceeds the total amount available in the fund for such payments, a pro rata payment shall be made to each approved claimant in the proportion that such claimant's approved claim amount bears to the total of all approved claims.

(f) If more than \$5 million has been paid to cotton producers prior to January 1, 2000, any excess funds in the Georgia Cotton Producers Indemnity Fund of 1999 shall be expended as provided in Code Section 2-19-5.1. (Code 1981, § 2-19-5, enacted by Ga. L. 1999, p. 1062, § 1; Ga. L. 2000, p. 1510, § 4; Ga. L. 2001, p. 956, § 2.)

**The 2001 amendment**, effective April 27, 2001, deleted "and the total amount of eligible claims is less than \$10 million," following "prior to January 1, 2000," in subsection (f).

§ 5, not codified by the General Assembly, provides that: "if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent."

**Editor's notes.** — Ga. L. 2001, p. 956,

### **2-19-5.1. "Cotton ginner" defined; payment of excess funds in indemnity fund; filing claims.**

(a) As used in this Code section, the term:

(1) "Contingent claim" means a claim filed because a trustee in bankruptcy had asserted, on or before March 1, 2001, a preference claim against the claimant to recover payments without which the claimant would have suffered a loss compensable under this chapter. "Contingent claim" also means a claim that would have been contingent, if it had been filed by a producer on or before May 1, 2000, or by a ginner on or before July 1, 2000.

(2) "Cotton ginner" means any person, firm, partnership, limited liability company, or corporation which operated a cotton gin in this state on May 1, 2000, and which incurred a loss as described in this Code section on or before May 1, 2000.

(b) If Congress so requires before January 1, 2002, notwithstanding any other provision of this chapter, after all valid and properly filed noncontingent claims of cotton producers filed on or before May 1, 2000, have been paid and after all valid and properly filed contingent claims of cotton producers filed on or before August 1, 2001, have been paid, any moneys remaining in the Georgia Cotton Producers Indemnity Fund of 1999, shall be paid to cotton ginner who:

(1) Incurred a loss as the result of the business failure of any cotton buyer doing business in this state or the failure or refusal of

any such cotton buyer to pay the contracted price which had been agreed upon by the ginner and the buyer for cotton grown in this state on or after January 1, 1997, and which had been purchased or contracted by the ginner from cotton producers in this state;

(2) Paid cotton producers the amount which the cotton ginner had agreed to pay for such cotton received from such cotton producers in this state;

(3) Notified the Commissioner on or before May 1, 2000, either orally or in writing, of a loss sustained by such cotton ginner as a result of the business failure of any cotton buyer doing business in this state or the failure or refusal of such cotton buyer to pay the contracted price which had been agreed upon by the ginner and the buyer for cotton grown in this state on or after January 1, 1997, and which had been purchased or contracted by the ginner from cotton producers in this state; and

(4) Filed any noncontingent claim for indemnification from the Georgia Cotton Producers Indemnity Fund of 1999 with the Commissioner, in writing and accompanied by sufficient proof of such losses, on or before July 1, 2000, or filed any contingent claim on or before August 1, 2001.

(c) Claims shall be filed by cotton ginner, shall contain the same information, and shall be verified in the same manner as provided in Code Section 2-19-4 for claims by cotton producers. The Commissioner shall have the same powers and duties to investigate, process, and pay claims of cotton ginner as provided in Code Section 2-19-3 for claims of cotton producers. Claims and the acceptance of payments on such claims shall be subject to Code Sections 2-19-6 and 2-19-7. Properly filed, verified, and proven claims by cotton ginner shall be paid by the Commissioner from the fund on or before December 31, 2001, or as soon as administratively practical thereafter. The payment of such claims shall not affect any payments which have previously been made to cotton producers from the fund. If insufficient moneys remain in the fund to pay the total amount of all claims filed by cotton ginner, claims shall be paid on a proportional basis, based on the ratio of each cotton ginner's properly filed and proven claim to the total of all cotton ginner's claims properly filed and proven. Any moneys remaining in the Georgia Cotton Producers Indemnity Fund of 1999 on January 1, 2002, after the payment of claims shall be paid into the general fund of the state treasury.

(d) Also notwithstanding any other provision of this chapter, including subsection (c) of this Code section, any moneys remaining in the Georgia Cotton Producers Indemnity Fund of 1999 after all valid and properly filed noncontingent claims of cotton producers have been paid,

shall also be paid to eligible cotton producers who filed contingent but otherwise valid claims on or before August 1, 2001.

(e) For a contingent claim to be paid, the claimant must tender proof acceptable to the Commissioner no later than November 30, 2001, that the contingency has occurred and the claimant has suffered the loss which would have been eligible but for the alleged preference payments. A contingent claim may be paid from the fund only to the extent of the actual recovery by the trustee. The Commissioner shall consider the reasonableness of any settlement or any apparent failure to litigate in good faith with the trustee. The Commissioner may cast upon contingent claimants the burden of proving the reasonableness of any settlement or apparent failure to litigate in good faith. (Code 1981, § 2-19-5.1, enacted by Ga. L. 2000, p. 1510, § 5; Ga. L. 2001, p. 956, § 3; Ga. L. 2005, p. 60, § 2/HB 95.)

**The 2001 amendment**, effective April 27, 2001, in subsection (a), added a colon at the end of the present introductory language, redesignated the language defining "Cotton ginner" as present paragraph (a)(2) and added paragraph (a)(1); in subsection (b), substituted the present language of the introductory paragraph for the former language of the introductory paragraph, which read: "Notwithstanding any other provision of this chapter, any moneys remaining in the Georgia Cotton Producers Indemnity Fund of 1999 on January 1, 2000, after all valid and properly filed claims filed on or before May 1, 2000, have been paid shall be paid to cotton ginner who:", in paragraph (b)(4), substituted "Filed any noncontingent claim" for "File claim" at the beginning and added ", or filed any contingent claim on or before August 1, 2001" at the end; in subsection (c), substituted the present

fourth sentence for the former fourth sentence, which read: "Properly verified and proven claims filed by cotton ginner on or before July 1, 2000, shall be paid by the Commissioner from the fund on or before December 31, 2000.", deleted the former fifth sentence which read: "Such claims shall be paid only from moneys remaining in the fund on January 1, 2000", and substituted "January 1, 2002" for "January 1, 2001" in the last sentence; and added subsections (d) and (e).

**The 2005 amendment**, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(1).

**Editor's notes.** — Ga. L. 2001, p. 956, § 5, not codified by the General Assembly, provides that: "if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent."

## **2-19-6. Stipulations on acceptance of indemnity payments; recovery of payments by the Commissioner.**

(a) Acceptance of an indemnity payment made pursuant to this chapter shall subrogate the state, to the extent of such indemnity payment, to any right or right of action accruing to the claimant to recover payments on account of losses resulting from the loss of the cotton or proceeds from the sale of the cotton with respect to which the indemnity payment is made. Acceptance of an indemnity payment made pursuant to this chapter shall constitute an agreement on the part of the recipient to repay to the Commissioner for deposit into the general fund of the state treasury any and all amounts, except those



amounts in excess of any indemnity payment, recovered by the claimant in any bankruptcy proceeding, other civil action, or in any other way arising from the loss of cotton or the loss of proceeds from the sale of cotton for which an indemnity payment has been made pursuant to this chapter. The requirements of this Code section shall be included in and made a condition of any claim filed pursuant to this chapter.

(b) Alternatively, if Congress so requires,

(1) Acceptance of an indemnity payment made pursuant to this chapter shall constitute an agreement on the part of the recipient to repay to the Commissioner for deposit into the Georgia Cotton Producers Indemnity Fund of 1999, any and all amounts, except those amounts in excess of any indemnity payment, recovered by the claimant in any bankruptcy proceeding, other civil action, or in any other way arising from the loss of cotton or the loss of proceeds from the sale of cotton for which an indemnity payment has been made pursuant to this chapter. The requirements of this Code section shall be deemed a condition of any claim filed pursuant to this chapter.

(2) The proceeds of any bond collected by the commissioner for the benefit of claimants, who have been paid by the Indemnity Fund, to that extent will be paid into the fund. (Code 1981, § 2-19-6, enacted by Ga. L. 1999, p. 1062, § 1; Ga. L. 2001, p. 956, § 4.)

**The 2001 amendment**, effective April 27, 2001, designated the existing provisions as subsection (a) and added subsection (b).

**Editor’s notes.** — Ga. L. 2001, p. 956,

§ 5, not codified by the General Assembly, provides that: “if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent.”

CHAPTER 21

ORGANIC CERTIFICATION AND LABELING

Sec.	
2-21-3.	Certification requirements.
2-21-4.	Packaging and labeling; registration required.

2-21-3. Certification requirements.

(a) Upon testing, any agricultural ingredient, article, commodity, or product which is identified, labeled, advertised, packaged, or promoted as organic shall contain no more than 5 percent of a level established as toxic by the United States Food and Drug Administration, the United States Environmental Protection Agency, the Environmental Protection

Division of the Department of Natural Resources, or the United States Department of Agriculture.

(b) Producers, brokers, distributors, and processors of an organic food or feed product which is identified, advertised, promoted, labeled, or packaged as organic shall keep accurate records of all purchasing, shipping, and storage practices which transpired while any organic commodity or product was in the possession of a producer, broker, distributor, or processor. Accurate records shall include the location at which such organic commodity or product originated.

(c) On or after July 1, 2000, any qualifying organic production, distribution, or processing practices shall be deemed eligible for certification upon approval by the department. The department shall review any organic production, distribution, or processing practice which began prior to July 1, 2000, and may approve certification if such practice meets the requirements as set forth in this chapter and the standards adopted by the department. (Code 1981, § 2-21-3, enacted by Ga. L. 2000, p. 1648, § 1; Ga. L. 2001, p. 4, § 2.)

**The 2001 amendment**, effective February 12, 2001, part of an Act to revise, modernize, and correct the Code, substituted “On or after July 1, 2000,” for “Upon July 1, 2000,” at the beginning of subsection (c).

#### **2-21-4. Packaging and labeling; registration required.**

(a) No person may use the words “certified organic by” in the identification, advertising, promotion, packaging, or labeling of a food or feed ingredient, article, commodity, or product unless that ingredient, article, commodity, or product complies with the requirements of Code Section 2-21-3 and unless the producer, distributor, or processor has a certification in good standing from the department.

(b) No person who produces, processes, distributes, or handles an advertised, promoted, identified, tagged, stamped, packaged, or labeled organic food or feed ingredient, article, commodity, or product may substitute or commingle any ingredient, article, commodity, or product which does not comply with Code Section 2-21-3.

(c) Any fresh, wholesale or retail organic food or feed ingredient, article, commodity, or product shall be tagged, stamped, labeled, crated, bagged, packaged, or be in any other standardized form which complies with state and federal regulations pertaining to inspection, identity, contents, weight, measure, and grade.

(d) Any food or feed ingredient, article, commodity, or product labeled as organic must be certified by the department or a department approved certifying entity as meeting the requirements of this chapter prior to being sold in the State of Georgia after July 1, 2000.

(e) On and after January 1, 2003, no person shall produce, process, distribute, or handle in this state any advertised, promoted, identified, tagged, stamped, packaged, or labeled organic food or feed ingredient, article, commodity, or product unless such person has first registered with the department; provided, however, that retail food sales establishments licensed under Article 2 of this chapter that do not process or repackage certified organic commodities shall be exempt from registration provisions set forth in this chapter. On and after January 1, 2003, no organization, business, firm, or individual shall act as a certifying entity in this state unless such organization, business, firm, or individual has first registered with the department. The Commissioner shall establish by regulation registration standards for producers, processors, distributors, handlers, and certifying entities not inconsistent with this chapter. Registration shall be made upon forms prescribed and furnished by the department. Registrations shall expire on the last day of December of the year for which they are issued. The Commissioner shall establish by rule a registration fee for certifying entities in an amount of not less than \$75.00 nor more than \$1,000.00 per annum and may establish classes of certifying entities with different registration fees for each class. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1. (Code 1981, § 2-21-4, enacted by Ga. L. 2000, p. 1648, § 1; Ga. L. 2002, p. 1295, § 1; Ga. L. 2010, p. 9, § 1-14/HB 1055.)

**The 2002 amendment**, effective July 1, 2002, substituted “handles” for “transports” near the beginning of subsection (b); deleted “and must bear the official seal of the certifying entity which provides certification of the organic production, distribution, or processing practices for such organic food or feed ingredient, article, commodity, or product” following “grade”

at the end of subsection (c); and added subsection (e).

**The 2010 amendment**, effective May 12, 2010, in subsection (e), in the sixth sentence, substituted “not less than \$75.00 nor more than \$1,000.00” for “not less than \$25.00 nor more than \$500.00”, and added the last sentence.

## 2-21-8. Penalty.

### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting of offenders not required.** — A violation of O.C.G.A. § 2-21-8 is not an offense designated as

one that requires fingerprinting. 2000 Op. Att’y Gen. No. 2000-11.



CHAPTER 22

POULTRY CONTRACT GROWERS OR PRODUCERS

Sec.		Sec.	
2-22-1.	Definitions.		mation and data to determine compensation.
2-22-2.	Voidability of contracts by contract growers or producers; right and notice of cancellation.	2-22-4.	Weighing and measuring of poultry.
2-22-3.	Provision of statistical infor-	2-22-5.	Application of Fair Business Practices Act.

**Effective date.** — This chapter became effective July 1, 2004.

**Cross references.** — Live poultry dealers, brokers, and market operators, § 4-4-80 et seq.

2-22-1. Definitions.

As used in this chapter, the term:

- (1) “Contract grower or contract producer” means a producer of poultry who holds a legal interest in a contract operation and who produces poultry under a production contract at that contract operation.
- (2) “Integrator or processor” means a person who owns poultry that is produced by a contract grower or contract producer or who is engaged in the business of manufacturing goods from poultry, including by slaughtering or processing poultry.
- (3) “Production contract” means an agreement executed by an integrator or processor that provides for the production of poultry or the provision of management services relating to the production of poultry by a contract grower or contract producer in this state. (Code 1981, § 2-22-1, enacted by Ga. L. 2004, p. 688, § 1.)

2-22-2. Voidability of contracts by contract growers or producers; right and notice of cancellation.

- (a) Any production contract entered into, extended, renewed, or amended on or after July 1, 2004, shall be voidable by the contract grower or contract producer if:
  - (1) The contract grower or contract producer has not been afforded the opportunity to have the proposed production contract reviewed outside the business premises of the integrator or processor or its agents by an attorney or adviser of the contract grower’s or contract producer’s choosing for at least three business days prior to execu-

tion; provided, however, that this paragraph shall not apply to the mere extension or renewal of an existing contract with no change in material terms from the existing contract other than the period covered thereby;

(2) The contract does not quote the provisions of subsection (b) of this Code section; or

(3) The contract is not signed by all parties before chicks are placed with the contract grower or contract producer.

(b)(1) Unless waived in writing by the contract grower or contract producer at the time of signing a production contract, the contract grower or contract producer shall have a right to cancel a production contract until 12:00 Midnight of the third business day after the day on which he or she signs the contract or until chicks have been placed with the contract grower or contract producer, whichever occurs first.

(2) Notice of cancellation under this subsection shall be given in writing to the integrator or processor at the place of business as set forth in the production contract by certified mail or statutory overnight delivery, return receipt requested, which shall be posted before termination of the right to cancel under paragraph (1) of this subsection. Notice of such written cancellation need not include any particular words or phrases to be effective so long as it indicates the intention of the contract grower or contract producer not to be bound by the production contract. (Code 1981, § 2-22-2, enacted by Ga. L. 2004, p. 688, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, “July 1, 2004,” was substituted for “the effective date of this chapter” in subsection (a).

### **2-22-3. Provision of statistical information and data to determine compensation.**

Any integrator or processor shall provide to any contract grower or contract producer upon request thereby any statistical information and data used to determine compensation paid to such contract grower or contract producer under a production contract, other than a trade secret as defined by Code Section 10-1-761. (Code 1981, § 2-22-3, enacted by Ga. L. 2004, p. 688, § 1.)

### **2-22-4. Weighing and measuring of poultry.**

Any contract grower or contract producer or the designee thereof shall have the right to be present at the weighing of poultry produced by such grower or producer, be present at the weighing of feed delivered by the integrator or processor, and observe the weights and measures used to determine compensation due such grower or producer under a

production contract. (Code 1981, § 2-22-4, enacted by Ga. L. 2004, p. 688, § 1.)

### 2-22-5. Application of Fair Business Practices Act.

(a) Violations of the provisions of Code Section 2-22-3 or 2-22-4 shall be subject to the same civil remedies and in the same manner as provided by Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975,” for persons whose business or property has been injured or damaged as a result of an unfair or deceptive act or practice in violation of subsection (a) of Code Section 10-1-393.

(b) The provisions of Code Section 2-22-3 or 2-22-4 may be enforced by the Commissioner in the same manner as provided by Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975,” for enforcement of the provisions of said part by the administrator of consumer affairs against a person reasonably appearing to have engaged in an unfair or deceptive act or practice in violation of subsection (a) of Code Section 10-1-393, and the superior courts may grant injunctive relief and impose the same civil penalties for violations of injunctions as provided in said part. (Code 1981, § 2-22-5, enacted by Ga. L. 2004, p. 688, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, “an” was inserted preceding “unfair” in subsection (b).



## TITLE 3

### ALCOHOLIC BEVERAGES

Chap.

1. General Provisions, 3-1-1 through 3-1-5.
2. State Administration and Enforcement, 3-2-1 through 3-2-36.
3. Regulation of Alcoholic Beverages Generally, 3-3-1 through 3-3-46.
4. Distilled Spirits, 3-4-1 through 3-4-180.
5. Malt Beverages, 3-5-1 through 3-5-90.
6. Wine, 3-6-1 through 3-6-71.
8. Sale of Alcoholic Beverages at Publicly Owned Facilities, 3-8-1 through 3-8-6.
9. Sale of Alcoholic Beverages by Passenger Carriers, Nonprofit Organizations, and Hotels and Motels, 3-9-1 through 3-9-13.
13. Sale of Alcoholic Beverages by Regional Economic Assistance Project, 3-13-1 through 3-13-4.
14. Special Event Use Permits, 3-14-1.

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## CHAPTER 1

### GENERAL PROVISIONS

Sec.		ings relating to licenses or
3-1-2.	Definitions.	taxes.
3-1-3.	Use of existing forms and fil-	

#### 3-1-1. Short title.

### RESEARCH REFERENCES

<b>Am. Jur. Pleading and Practice Forms.</b> — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, § 3.	Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors, 116 ALR5th 149.
<b>ALR.</b> — Interplay between	

#### 3-1-2. Definitions.

As used in this title, the term:

(1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) "Alcoholic beverage" means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

(3) "Brewpub" means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in Code Section 3-5-36 for retail consumption on the premises and solely in draft form. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, beer, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food; provided, however, that barrels of beer sold to licensed wholesale dealers for distribution to retailers and retail consumption dealers, as authorized pursuant to subparagraph (C) of paragraph (2) of Code Section 3-5-36, shall not be used when determining the total annual gross food and beverage sales.

(4) "Broker" means any person who purchases or obtains an alcoholic beverage from an importer, distillery, brewery, or winery and sells the alcoholic beverage to another broker, importer, or wholesaler without having custody of the alcoholic beverage or maintaining a stock of the alcoholic beverage.

(5) "Commissioner" means the state revenue commissioner.

(6) "County or municipality" means those political subdivisions of this state as defined by law and includes any form of political subdivision consolidating a county with one or more municipalities.

(7) "Department" means the Department of Revenue.

(8) "Distilled spirits" means any alcoholic beverage obtained by distillation or containing more than 21 percent alcohol by volume, including, but not limited to, all fortified wines.

(9) "Fortified wine" means any alcoholic beverage containing more than 21 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, brandy.

(10) "Gallon" or "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches or the nearest equivalent metric measurement.

(10.1) "Hard cider" means an alcoholic beverage obtained by the fermentation of the juice of apples, containing not more than 6 percent alcohol by volume, including, but not limited to flavored or

carbonated cider. For purposes of this title, hard cider shall be deemed a malt beverage. The term does not include "sweet cider."

(11) "Importer" means any person who imports an alcoholic beverage into this state from a foreign country and sells the alcoholic beverage to another importer, broker, or wholesaler and who maintains a stock of the alcoholic beverage.

(12) "Individual" means a natural person.

(13) "Malt beverage" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer. The term does not include sake, known as Japanese rice wine.

(14) "Manufacturer" means any maker, producer, or bottler of an alcoholic beverage. The term also means:

(A) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits;

(B) In the case of malt beverages, any brewer; and

(C) In the case of wine, any vintner.

(15) "Military reservation" means a duly commissioned post, camp, base, or station of a branch of the armed forces of the United States located on territory within this state which has been ceded to the United States.

(16) "Package" means a bottle, can, keg, barrel, or other original consumer container.

(17) "Person" means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

(18) "Retail consumption dealer" means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.

(19) "Retailer" or "retail dealer" means, except as to distilled spirits, any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term shall have the same meaning as the term "retail package liquor store."



(19.1) “Retail package liquor store” means a retail business establishment owned by an individual, partnership, corporation, association, or other business entity:

(A) Primarily engaged in the retail sale of distilled spirits, malt beverages, and wine in unbroken packages, not for consumption on the premises, except as authorized under this chapter; and

(B) Which derives from such retail sale of alcoholic beverages in unbroken packages at least 75 percent of its total annual gross sales from the sale of a combination of distilled spirits, malt beverages, and wine.

(20) “Shipper” means any person who ships an alcoholic beverage from outside this state.

(21) “Standard case” means six containers of 1.75 liters, 12 containers of 750 milliliters, 12 containers of one liter, 24 containers of 500 milliliters, 24 containers of 375 milliliters, 48 containers of 200 milliliters, or 120 containers of 50 milliliters.

(22) “Taxpayer” means any person made liable by law to file a return or to pay tax.

(23) “Wholesaler” or “wholesale dealer” means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.

(24) “Wine” means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this Code section. (Code 1933, § 5A-102, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, §§ 2-4; Ga. L. 1994, p. 553, § 1; Ga. L. 1995, p. 734, § 1; Ga. L. 1998, p. 1581, § 1; Ga. L. 2004, p. 584, § 1; Ga. L. 2006, p. 206, § 1/HB 1248; Ga. L. 2012, p. 680, § 1/HB 472; Ga. L. 2013, p. 767, § 2/HB 124.)

**The 2004 amendment**, effective July 1, 2004, substituted “14 percent” for “6 percent” in the middle of the first sentence of paragraph (13).

**The 2006 amendment**, effective July 1, 2006, deleted former paragraph (22), which read “Tax stamp” means the official

mark, stamp, or indicium of the department used to indicate the payment of taxes imposed by this title.”, and redesignated former paragraphs (23) through (25) as present paragraphs (22) through (24), respectively.

**The 2012 amendment**, effective July

1, 2012, in paragraph (3), in the second sentence, substituted “paragraph” for “article” near the beginning, inserted “beer,” near the middle, and added the proviso at the end.

The 2013 amendment, effective July 1, 2013, in paragraph (19), substituted “shall have the same meaning as the term ‘retail package liquor store.’” for “means any person who sells distilled spirits in unbroken packages at retail only to consumers and not for resale.”; and added paragraph (19.1).

3-1-3. Use of existing forms and filings relating to licenses or taxes.

Every form of license or tax document or other license or tax related filing lawfully in use immediately prior to July 1, 1981, may continue to be so used or be effective until the commissioner, in accordance with this title, otherwise prescribes. (Code 1933, § 5A-104, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2006, p. 206, § 2/HB 1248.)

The 2006 amendment, effective July 1, 2006, deleted “(including tax stamps)”

following “tax document” near the beginning.

CHAPTER 2

STATE ADMINISTRATION AND ENFORCEMENT

Article 1		Sec.	
Administration			credit; setoff of unpaid taxes against credit.
Sec.			Article 2
3-2-2.	Promulgation of rules and regulations generally; forms.		Enforcement
3-2-7.	Expiration and renewal of licenses generally; continuation of operations by licensee pending final approval or disapproval of application for renewal; penalty for late application for renewal; temporary permits.	3-2-30.	Powers and duties of special agents and enforcement officers of department generally; bond requirement; retention of weapon and badge upon retirement or disability.
3-2-10.	Disposition of taxes, penalties, interest, and fees.	3-2-33.	Sale, possession, concealment, storage, or conveyance of untaxed alcoholic beverages; declaration of untaxed or otherwise unlawful alcoholic beverages as contraband; seizure and disposition of contraband alcoholic beverages.
3-2-13.	Issuance of refunds or credits for taxes paid.		
3-2-14.	Limitations on credit; application; action for recovery of		

## ARTICLE 1

## ADMINISTRATION

**3-2-1. Powers and duties of commissioner generally; delegation of administrative duties.**

## RESEARCH REFERENCES

**ALR.** — Interplay between Clause concerning state regulation of intoxicating liquors, 116 ALR5th 149.  
Twenty-First Amendment and Commerce

**3-2-2. Promulgation of rules and regulations generally; forms.**

(a) The commissioner may make and publish in print or electronically reasonable rules and regulations not inconsistent with this title or other laws or the Constitution of this state or of the United States for the enforcement of this title and the collection of revenues under this title.

(b) The commissioner shall prescribe the forms which he deems necessary in order to administer and enforce this title.

(c) The authority granted to the commissioner pursuant to this Code section shall be exercised at all times in conformity with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(d) This Code section shall apply with respect to all rules and regulations promulgated by the commissioner pursuant to this title. (Code 1933, § 5A-302, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in subsection (a).

## JUDICIAL DECISIONS

**Regulations to be in accord with law.**

Law permitted the state revenue department to promulgate reasonable rules and regulations not inconsistent with the title under which the law fell or other laws, and the regulations challenged by the two associations were not invalid on

the ground that they were unauthorized since the regulations governing distribution of malt beverages in Georgia that were challenged were all authorized generally by O.C.G.A. § 3-2-2(a). *Ga. Oilmen’s Ass’n v. Ga. Dep’t of Revenue*, 261 Ga. App. 393, 582 S.E.2d 549 (2003).



**3-2-3. Powers and duties of commissioner as to denial, suspension, or cancellation of licenses generally; promulgation of rules and regulations as to conversion of standards of measurement to English system and labeling of distilled spirits.**

**RESEARCH REFERENCES**

**Am. Jur. Pleading and Practice** Practice Forms, Intoxicating Liquors, Forms. — 14C Am. Jur. Pleading and § 48.

**3-2-5. Collection of taxes under title; issuance of licenses.**

**RESEARCH REFERENCES**

**Am. Jur. Pleading and Practice** Practice Forms, Intoxicating Liquors, Forms. — 14C Am. Jur. Pleading and § 48.

**3-2-7. Expiration and renewal of licenses generally; continuation of operations by licensee pending final approval or disapproval of application for renewal; penalty for late application for renewal; temporary permits.**

(a)(1) Except as otherwise specifically provided in paragraph (2) of this subsection or elsewhere in this title, all licenses issued pursuant to this title shall expire on December 31 of each year and application for renewal shall be made annually on or before November 1.

(2) On and after July 1, 2013, licenses for retailers and retail dealers shall be issued for a 12 month period to be determined by the commissioner and provided by regulation. Applications for renewal of licenses for retailers and retail dealers shall be made not less than 60 nor more than 90 days prior to expiration.

(b) Any licensee making proper application, with all supporting documents, for a license to operate during the following year and having filed the application prior to the renewal date specified in subsection (a) of this Code section shall be permitted to continue to operate pending final approval or disapproval of the licensee's application for the following year if final approval or disapproval is not granted prior to the day in which the license is set to expire. The effective date and the expiration date of the license shall be clearly marked on the license.

(c) Any person holding any license issued pursuant to this title who fails to file a proper application for a similar license for the following year, with the proper fee accompanying the application, on or before the renewal date specified in subsection (a) of this Code section and who files an application after such date shall be required to pay, in addition

to the license taxes imposed by this title, an additional amount equal to one-half the amount required for the license for which application is made.

(d) Persons making initial applications for licenses issued pursuant to this title, after properly filing all required documents, including a valid local license, may be authorized by the commissioner to operate pursuant to a temporary permit which shall be issued under such regulations and in such form as the commissioner may deem appropriate. No right or property shall vest in any applicant by virtue of the issuance of such permit. The commissioner may impose a prelicense investigative fee upon persons making initial application for licenses issued pursuant to this title, which fee shall not exceed \$100.00. No such fee shall be refundable. (Code 1933, § 5A-307, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 9; Ga. L. 2012, p. 827, § 1/HB 1066.)

**The 2012 amendment**, effective July 1, 2012, designated the existing provisions of subsection (a) as paragraph (a)(1); inserted “in paragraph (2) of this subsection or elsewhere” near the beginning of paragraph (a)(1); added paragraph (a)(2); in subsection (b), in the first sentence, deleted “calendar” preceding “year”, substituted “the renewal date specified in subsection (a) of this Code section” for

“November 1” near the middle, and substituted “the day in which the license is set to expire” for “January 1” at the end, and added the second sentence; and, in subsection (c), in the middle, substituted “the renewal date specified in subsection (a) of this Code section” for “January 1” and substituted “such date” for “January 1”.

### 3-2-10. Disposition of taxes, penalties, interest, and fees.

All taxes, penalties, interest, and fees collected by the commissioner pursuant to this title shall be remitted to the Office of the State Treasurer to the credit of the general fund of this state. (Code 1933, § 5A-310, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fis-

cal Services” in the middle of this Code section.

### 3-2-13. Issuance of refunds or credits for taxes paid.

(a) The commissioner may issue credits for taxes paid by or due from a wholesaler when it is shown to the commissioner’s satisfaction that any of the following events has occurred:

(1) Alcoholic beverages have been received by the wholesaler through an error in shipment and the alcoholic beverages are returned to the shipper prior to any sale by the wholesaler in this state;

(2) Alcoholic beverages ordered by the wholesaler have been destroyed in transit prior to entry into the wholesaler's warehouse or storage area;

(3) Alcoholic beverages which are unfit for consumption upon receipt have been received by the wholesaler and the alcoholic beverages are returned to the shipper or destroyed prior to any sale by the wholesaler in this state;

(4) Alcoholic beverages have been destroyed while in the possession of a wholesaler within the state by an act of God, such as fire, flood, lightning, wind, or other natural calamity;

(5) Wines have been sold by the wholesaler for delivery and consumption outside the state, provided the sale and delivery shall in all respects comply with the requirements of Code Section 3-6-26.1; or

(6) Taxes were paid under a statute expressly held to be unconstitutional by a court of last resort and the payments were made under protest and the ground of the protest was the same as the basis for the ruling of unconstitutionality by the court of last resort.

(b) No person shall receive a credit for taxes paid in any case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the person seeking a refund or credit. When an applicant is issued a credit for taxes paid, in every case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the applicant, the applicant shall refund or credit to the purchaser or customer an amount equal to the credit allowed by the commissioner.

(c) In the event that the commissioner issues a credit under this Code section to a person who has or will have insufficient tax liabilities to the State of Georgia against which to offset the credit, the commissioner shall issue a refund to such person for the unusable portion of the credit. (Code 1933, § 5A-313, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 11; Ga. L. 1992, p. 1458, § 1; Ga. L. 1993, p. 83, § 1; Ga. L. 2006, p. 206, § 3/HB 1248.)

**The 2006 amendment**, effective July 1, 2006, in the opening paragraph of subsection (a), deleted "or, in the case of taxes on distilled spirits, may issue credits for stamps purchased by a manufacturer, distiller, or wholesaler" near the beginning and substituted "has occurred" for "have occurred" near the end; deleted "or stamps were purchased" from paragraph (a)(6);

and in subsection (b), deleted "or stamps purchased" near the beginning and deleted "or to the cost of the stamps purchased" near the middle of the first sentence, and deleted "or stamps purchased" near the beginning and deleted "or cost of the stamps purchased" near the middle of the second sentence.



**3-2-14. Limitations on credit; application; action for recovery of credit; setoff of unpaid taxes against credit.**

(a) No credit for taxes paid on alcoholic beverages in payment of taxes on alcoholic beverages shall be allowed unless an application for credit is filed with the commissioner within 90 days from the date payment is received by the commissioner. If, in the opinion of the commissioner, an application for credit of taxes paid pursuant to this title contains a false statement, the application shall be denied. When an applicant is indebted to the state or an applicant is in violation of this title, the commissioner shall decline to approve the credit until the applicant has complied with the laws of this state. In no event shall interest be allowed on any refund or credit for taxes paid on alcoholic beverages. Nothing contained in this Code section shall be construed so as to allow for a credit or refund of any license fee lawfully due or paid under this title.

(b) Each application for credit shall be filed in writing in the form and containing such information as the commissioner may reasonably require. The commissioner or his delegate shall consider information contained in the application, together with such other information as may be available, and shall approve or disapprove the application and notify the applicant of his action. Any applicant whose claim is denied by the commissioner or his delegate or whose claim is not decided by the commissioner or his delegate within one year from the date of filing the claim shall have the right to bring an action for a credit in the Superior Court of Fulton County. No action or proceeding for the recovery of a credit shall be commenced before the expiration of one year from the date of filing the application unless the commissioner or his delegate renders a decision on the application within that time, nor shall any action or proceeding be commenced after the occurrence of the earlier of (1) the expiration of one year from the date the claim is denied, or (2) the expiration of two years from the date the application was filed. The time for filing an action for the recovery of a credit may be extended for such period as may be agreed upon in writing between the applicant and the commissioner during the period authorized for bringing an action or any extension thereof. In the event any application is approved and the taxpayer has not paid other state taxes which have become due, the commissioner may set off the unpaid taxes against the credit. When the setoff authorized in this Code section is exercised, the credit shall be deemed granted and the amount of the setoff shall be considered for all purposes as a payment toward the particular tax debt which is being set off. Any excess credit properly allowable under this article which remains after the setoff has been applied may be credited to the taxpayer. (Code 1933, § 5A-314, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1992, p. 1458, § 2; Ga. L. 2006, p. 206, § 4/HB 1248.)

The 2006 amendment, effective July 1, 2006, in subsection (a), deleted “or for stamps purchased” near the beginning of the first sentence, and deleted “or for

stamps purchased in payment of taxes on alcoholic beverages” near the end of the fourth sentence.

## ARTICLE 2

### ENFORCEMENT

#### **3-2-30. Powers and duties of special agents and enforcement officers of department generally; bond requirement; retention of weapon and badge upon retirement or disability.**

(a) Persons appointed by the commissioner as special agents or enforcement officers of the department, in the enforcement of this title and other laws of this state with respect to the manufacture, transportation, distribution, sale, storage, or possession of alcoholic beverages, shall have the authority throughout the state to:

(1) Obtain and execute warrants for arrest of persons charged with violations of such laws;

(2) Obtain and execute search warrants in the enforcement of such laws;

(3) Arrest without warrant any person violating such laws in the officer’s presence or within his immediate knowledge when there is likely to be a failure of enforcement of such laws for want of a judicial officer to issue a warrant;

(4) Make investigations in the enforcement of such laws and, in connection with the investigations, to go upon any property outside of buildings, posted or otherwise, in the performance of official duties;

(5) Seize and take possession of all property which is declared contraband under such laws; and

(6) Carry firearms while performing their duties.

(b) Each special agent or enforcement officer shall file with the commissioner a public official’s bond in the amount of \$1,000.00, the cost of which shall be paid by the department.

(c) Nothing in this title shall be construed so as to relieve any special agent or enforcement officer, after making an arrest, from the duties imposed generally to obtain a warrant promptly and, without undue delay, to return arrested persons before a person authorized to examine, commit, or receive bail, as required by general law.

(d) After an agent or enforcement officer has accumulated 25 years of service with the department, upon leaving the department under

honorable conditions, such agent or enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge pursuant to regulations promulgated by the commissioner.

(e) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a law enforcement officer. When a special agent or an enforcement officer leaves the department as a result of a disability arising in the line of duty, such special agent or an enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner. (Ga. L. 1963, p. 135, §§ 1, 2; Code 1933, § 5A-350, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 12; Ga. L. 1996, p. 1074, § 1; Ga. L. 2004, p. 1058, § 1; Ga. L. 2005, p. 60, § 3/HB 95.)

**The 2004 amendment**, effective July 1, 2004, added subsection (e).

7, 2005, part of an Act to revise, modernize, and correct the Code, revised punctuation and grammar in subsection (e).

**The 2005 amendment**, effective April

### **3-2-33. Sale, possession, concealment, storage, or conveyance of untaxed alcoholic beverages; declaration of untaxed or otherwise unlawful alcoholic beverages as contraband; seizure and disposition of contraband alcoholic beverages.**

(a) Except as otherwise specifically provided for by law, it is unlawful for any person to sell, possess, conceal, store, or convey any alcoholic beverage on which any tax or license fee imposed by this title has not been paid.

(b) Any peace officer or authorized agent of the commissioner shall declare as contraband any alcoholic beverage:

(1) Not reported for collection of taxes under a reporting system established by the commissioner;

(2) Found in any county, municipality, or unincorporated area of any county where the sale of alcoholic beverages is not lawful when the alcoholic beverage is intended for use or sale contrary to law; or

(3) Sold, conveyed, or possessed, concealed, stored, or held for sale by any person who has not first obtained all licenses required by this title.

(c) Except as otherwise provided in this title, all contraband alcoholic beverages seized shall be immediately delivered to the commissioner or to persons designated by him to receive the contraband alcoholic beverages. (Code 1933, § 5A-354, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 14; Ga. L. 1985, p. 1118, § 1; Ga. L. 2006, p. 206, § 5/HB 1248.)



The 2006 amendment, effective July 1, 2006, deleted “bearing the required tax stamps or markings as provided by this title or not” near the beginning of paragraph (b)(1).

**3-2-35. Seizure of contraband by commissioner and agents; proceedings upon seizure; hearing on entitlement to seized items; appeals; disposition of items upon which taxes have been paid.**

**RESEARCH REFERENCES**

**ALR.** — What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

**3-2-36. Arrest and prosecution of violators of title.**

**RESEARCH REFERENCES**

**Am. Jur. Pleading and Practice** Practice Forms, Intoxicating Liquors, **Forms.** — 14C Am. Jur. Pleading and § 79.



**CHAPTER 3**

**REGULATION OF ALCOHOLIC BEVERAGES  
GENERALLY**

**Article 1**

**General Provisions**

- |          |   |
|----------|---|
| Sec.     |   |
| 3-3-2.   | Powers of local governing authorities as to granting, refusal, suspension, or revocation of licenses generally; due process guidelines; fingerprints. |
| 3-3-2.2. | Maximum fine for violations of local alcoholic beverages licensing ordinances.  |
| 3-3-7.   | Local authorization and regulation of sales of alcoholic beverages on Sunday.   |

**Article 2**

**Prohibited Acts**

- |           |  |
|-----------|--|
| Sec.      |  |
| 3-3-21.   | Sales of alcoholic beverages near churches, school buildings, or other sites.    |
| 3-3-23.1. | Procedure and penalties upon violation of Code Section 3-3-23.                   |
| 3-3-28.   | Reuse, counterfeiting, or forging of tax stamps [Repealed].                      |
| 3-3-33.   | Vaporized form of alcoholic beverages and alcohol vaporizing devices prohibited. |

## ARTICLE 1

## GENERAL PROVISIONS

**3-3-1. Declaration of business of manufacturing, selling, and other dealings in alcoholic beverages as privilege subject to regulatory requirements.**

## JUDICIAL DECISIONS

**Stock agreement not illegal.** — Ga. Comp. R. & Regs. r. 560-2-2-.38 is not shown to be derived from any statute, constitutional provision, or judicial decision apart from the Georgia Department of Revenue's mandate under the Georgia Alcoholic Beverage Code (Act), O.C.G.A. § 3-1-1, to make rules and regulations for the enforcement of the Act and the collection of revenues under the Act; although the parties intended to circumvent Ga.

Comp. R. & Regs. r. 560-2-2-.38 by issuing corporate stock to an employee's wife, the stock agreement was not illegal or immoral; thus, a trial court erred in voiding the stock interest of the employee's wife, and summary judgment in favor of the corporation in the wife's action for an accounting, dissolution, and other relief was reversed. *Edwards v. Grapefields, Inc.*, 267 Ga. App. 399, 599 S.E.2d 489 (2004).

**3-3-2. Powers of local governing authorities as to granting, refusal, suspension, or revocation of licenses generally; due process guidelines; fingerprints.**

(a) Except as otherwise provided for in this title, the manufacturing, distributing, and selling by wholesale or retail of alcoholic beverages shall not be conducted in any county or incorporated municipality of this state without a permit or license from the governing authority of the county or municipality. Each such local governing authority is given discretionary powers within the guidelines of due process set forth in this Code section as to the granting or refusal, suspension, or revocation of the permits or licenses; provided, however, that residency by an applicant within the city or county issuing the permit or license shall not be a requirement by the respective local governing authority if the applicant designates a resident of the city or county who shall be responsible for any matter relating to the license.

(b) The granting or refusal and the suspension or revocation of the permits or licenses shall be in accordance with the following guidelines of due process:

(1) The governing authority shall set forth ascertainable standards in the local licensing ordinance upon which all decisions pertaining to these permits or licenses shall be based;

(2) All decisions approving, denying, suspending, or revoking the permits or licenses shall be in writing, with the reasons therefor stated, and shall be mailed or delivered to the applicant; and

(3) Upon timely application, any applicant aggrieved by the decision of the governing authority regarding a permit or license shall be afforded a hearing with an opportunity to present evidence and cross-examine opposing witnesses.

(c) As a prerequisite to the issuance of any such initial permit or license only, the applicant shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the governing authority submitting the fingerprints. (Ga. L. 1935, p. 73, § 15A; Ga. L. 1973, p. 12, § 1; Ga. L. 1973, p. 14, § 1; Code 1933, § 5A-502, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 17; Ga. L. 1998, p. 1300, § 1; Ga. L. 2006, p. 206, § 6/HB 1248.)

**The 2006 amendment**, effective July 1, 2006, substituted “initial permit or li-

cense only” for “permit or license” near the beginning of subsection (c).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Alcohol licensing ordinance constitutional.

That part of the Jasper, Ga., Alcoholic Beverages Ordinance that authorized license revocation for any legal violation that the City Council determined to have

occurred violated due process principles and could not stand; there were no such limits on the council’s discretionary revocation authority and no “ascertainable standards” to guide or limit the grounds for the Council’s decision. *Folsom v. City of Jasper*, 279 Ga. 260, 612 S.E.2d 287 (2005).

RESEARCH REFERENCES

**ALR.** — Interplay between

Twenty-First Amendment and Commerce

Clause concerning state regulation of intoxicating liquors, 116 ALR5th 149.

3-3-2.2. Maximum fine for violations of local alcoholic beverages licensing ordinances.

Notwithstanding the limitations imposed by subparagraph (a)(2)(C) of Code Section 36-35-6 or any other provision of general law, in the case of a county or municipality which issues more than 300 licenses for consumption of alcoholic beverages on the premises, the maximum fine for violations of local alcoholic beverages licensing ordinances refer-



enced in Code Section 3-3-2 pertaining to licenses issued to sell alcoholic beverages by the drink for consumption on the premises shall be \$2,500.00. Nothing in this Code section shall prohibit the governing authority of a county or municipality from imposing a penalty that is otherwise allowed by law, unless such law is a local law in conflict with this Code section. (Code 1981, § 3-3-2.2, enacted by Ga. L. 2006, p. 874, § 1/HB 1501.)

**Effective date.** — This Code section became effective July 1, 2006.

### **3-3-3. Licenses required to distribute, sell, or otherwise deal in alcoholic beverages; display of licenses.**

#### **RESEARCH REFERENCES**

**Am. Jur. Pleading and Practice Forms.** — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, § 9.

### **3-3-7. Local authorization and regulation of sales of alcoholic beverages on Sunday.**

(a) In all consolidated governments of this state within the limits of which the sale of alcoholic beverages is lawfully authorized, such sales for consumption on the premises shall be authorized, at the discretion of the governing body of the consolidated government, at any time from 11:55 P.M. on Saturdays and the two hours immediately following such time.

(b) In each county having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census in which the sale of alcoholic beverages is lawful:

(1) The county governing authority may authorize the sale of alcoholic beverages for consumption on the premises at any time from 11:55 P.M. on Saturdays and the three hours immediately following such time; and

(2) Alcoholic beverages may be sold on Sundays between the hours of 12:30 P.M. and 12:00 Midnight in public stadiums, coliseums, and auditoriums with a seating capacity in excess of 3,500 persons and in eating establishments. As used in this paragraph, the term “eating establishment” means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(c) In all municipalities having a population of 300,000 or more according to the United States decennial census of 1970 or any future such census in which the sale of alcoholic beverages is lawful:

(1) The municipal governing authority may authorize the sale of alcoholic beverages for consumption on the premises at any time from 11:55 P.M. on Saturdays and the three hours immediately following such time; and

(2) Alcoholic beverages may be sold on Sundays between the hours of 12:30 P.M. and 12:00 Midnight in public stadiums, coliseums, and auditoriums with a seating capacity in excess of 3,500 persons; in eating establishments; and in locally designated special entertainment districts. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food. As used in this paragraph, the term "special entertainment districts" means contiguous properties upon which is located a festival marketplace and entertainment project which is financed in whole or in part by public funds and which contains a minimum of 200,000 square feet of gross leasable space for retail sales and entertainment purposes and which is located in the central business district of any such municipality if more than 50 percent of such contiguous properties are owned or controlled by a governmental entity.

(d) In each county having a population of not less than 153,000 nor more than 165,000 according to the United States decennial census of 1980 or any future such census in which the sale of alcoholic beverages is lawful and in all municipalities within such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises:

(1) At any time from 11:55 P.M. on Saturdays and the two hours immediately following such time; and

(2) In eating establishments which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays from 12:30 P.M. until 12:00 Midnight. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines for consumption on the premises and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(e)(1) In each county having a population of not less than 100,000 nor more than 150,000 according to the United States decennial census of 1970 or any future such census in which the sale of alcoholic beverages is lawful and in all municipalities in such counties in which

the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises in bona fide full-service restaurants at any time from 11:55 P.M. on Saturdays until 2:00 A.M. on Sundays; provided, however, that this subsection shall not apply to any geographic area of any municipal corporation which is located outside of the limits of any county in which the sale of alcoholic beverages is not lawful.

(2) As used in this subsection, the term “bona fide full-service restaurant” means an established place of business:

(A) Which is licensed to sell alcoholic beverages, distilled spirits, malt beverages, or wines for consumption on the premises;

(B) Where meals with substantial entrees selected by the patron from a full menu are served;

(C) Which has adequate facilities and sufficient employees for cooking or preparing and serving such meals for consumption at tables in dining rooms on the premises; and

(D) Which derives at least 50 percent of its gross income from the sale of such meals prepared, served, and consumed on the premises.

(3) The governing authority of such a county or municipality, by ordinance, may authorize any other establishment otherwise licensed to sell alcoholic beverages, distilled spirits, malt beverages, or wines for consumption on the premises to engage in such sales at any time from 11:55 P.M. on Saturdays until 2:00 A.M. on Sundays; provided, however, that the proviso in paragraph (1) of this subsection shall also be applicable to sales in establishments pursuant to this paragraph.

(4) The governing authority of such a county or municipality may provide for special licenses for and charge a license fee to establishments which engage in sales of such beverages at any time from 11:55 P.M. on Saturdays until 2:00 A.M. on Sundays. The license fee shall be set by the governing body.

(f) In each county having a population of 58,000 or more according to the United States decennial census of 1990, or any future such census in which the sale of alcoholic beverages is lawful, alcoholic beverages may be sold for consumption on the premises on each day of the week, including Sundays between the hours of 12:30 P.M. and 12:00 Midnight, on the premises of motor sport road race track facilities with a permanent seating capacity in excess of 10,000 persons. As used in this subsection, the term “premises” means restaurants, grandstands, and other event viewing areas owned, leased, or controlled by the establish-





question are for approval of Sunday sales, the governing authority in such counties and the governing authority of all municipalities within such counties may by appropriate resolution or ordinance permit and regulate Sunday sales by licensees.

(6) The expense of the election shall be borne by the county in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his further duty to certify the result thereof to the Secretary of State.

(i)(1) In each county having a population of more than 100,000 in any metropolitan statistical area having a population of not less than 250,000 nor more than 1,000,000 according to the United States decennial census of 1980 or any future such census in which the sale of alcoholic beverages is lawful in such a county and in all municipalities within such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises if Sunday sales are approved by referendum as provided in paragraph (2) of this subsection:

(A) At any time from 11:55 P.M. on Saturdays until 2:55 A.M. on Sundays; and

(B) In eating establishments which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays between the hours of 12:30 P.M. and 12:00 Midnight. As used in this subparagraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(2) Any governing authority desiring to permit and regulate Sunday sales pursuant to paragraph (1) of this subsection shall so provide by proper resolution or ordinance. Not less than ten nor more than 60 days after the date of approval of such resolution or ordinance, it shall be the duty of the election superintendent of the county or municipality to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of the county or municipality for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 60 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be published in the official organ of the county once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

- “[    ] YES    Shall the governing authority of (name of municipality or county) be authorized  
[    ] NO    to permit and regulate Sunday sales of distilled spirits or alcoholic beverages for beverage purposes by the drink?”

All persons desiring to vote for approval of Sunday sales shall vote “Yes,” and those persons desiring to vote for rejection of Sunday sales shall vote “No.” If more than one-half of the votes cast on the question are for approval of Sunday sales, the governing authority may by appropriate resolution or ordinance permit and regulate Sunday sales by licensees. The expense of the election shall be borne by the county or municipality in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his further duty to certify the result thereof to the Secretary of State.

(j)(1) Notwithstanding any other provisions of law, in all counties or municipalities in which the sale of alcoholic beverages is lawful for consumption on the premises, the governing authority of the county or municipality may, by resolution or ordinance conditioned on approval in a referendum, authorize the sale of alcoholic beverages for consumption on the premises on Sundays from 12:30 P.M. until 12:00 Midnight in any licensed establishment which derives at least 50 percent of its total annual gross sales from the sale of prepared meals or food in all of the combined retail outlets of the individual establishment where food is served and in any licensed establishment which derives at least 50 percent of its total annual gross income from the rental of rooms for overnight lodging.

(2) Any governing authority desiring to permit and regulate Sunday sales pursuant to this subsection, but only after a referendum election, shall so provide by proper resolution or ordinance conditioned on a referendum. Not less than ten nor more than 60 days after the date of approval of such resolution or ordinance, it shall be the duty of the election superintendent of the county or municipality to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of the county or municipality for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 60 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be published in the official organ of the county once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

- “[    ] YES    Shall the governing authority of (name of municipality or county) be authorized



[ ] NO to permit and regulate Sunday sales of distilled spirits or alcoholic beverages for beverage purposes by the drink?"

All persons desiring to vote for approval of Sunday sales shall vote "Yes," and those persons desiring to vote for rejection of Sunday sales shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday sales, the governing authority may by appropriate resolution or ordinance permit and regulate Sunday sales by licensees. Otherwise, such Sunday sales shall not be permitted. The expense of the election shall be borne by the county or municipality in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his further duty to certify the result thereof to the Secretary of State.

(3) Notwithstanding this subsection or any other provision of law, all county or municipal resolutions or ordinances enacted prior to April 6, 1984, pursuant to the authorizations granted by subsections (a) through (i) of this Code section are declared to be valid and shall remain in full force and effect unless affirmatively repealed by the governing authority of the county or municipality.

(k)(1) Notwithstanding other laws, in any county in which one-half of the net revenues collected from the legalizing, controlling, licensing, and taxing of the wholesale and retail sale of alcoholic beverages is paid over to the boards of education in such county, a municipality having an independent school system shall be authorized through its governing authority, either by proper resolution or ordinance approved by a majority of that governing authority or by proper resolution or ordinance so approved and by its terms having its effectiveness being contingent upon referendum approval pursuant to paragraph (2) of this subsection, to allow:

(A) The sale of alcoholic beverages for consumption on the premises at any time from 11:55 P.M. on Saturdays and three hours immediately following such time; and

(B) The sale and service by the drink of alcoholic beverages on Sundays from 12:30 P.M. until 12:00 Midnight in any licensed establishment which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food in all of the combined retail outlets of the individual establishment where food is served and in any licensed establishment which derives at least 50 percent of its total annual gross income from the rental of rooms for overnight lodging.

(2) If a resolution or ordinance is approved pursuant to paragraph (1) of this subsection and by its terms has its effectiveness contingent upon referendum approval pursuant to this paragraph, not less than

ten nor more than 60 days after the date of approval of such resolution or ordinance it shall be the duty of the election superintendent of the municipality, whose governing authority approved that resolution or ordinance, to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of that municipality for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 60 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be published in the official organ of the county in which that municipality is located once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

“[     ] YES    Shall Sunday sales of alcoholic beverages by the drink be authorized in  
[     ] NO    (name of municipality)?”

All persons desiring to vote for approval of Sunday sales shall vote “Yes,” and those persons desiring to vote for rejection of Sunday sales shall vote “No.” If more than one-half of the votes cast on the question are for approval of Sunday sales, the resolution or ordinance approving such Sunday sales shall become effective upon the date so specified in that resolution or ordinance. The expense of the election shall be borne by the municipality in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his further duty to certify the result thereof to the Secretary of State.

(1) In all counties having a population of 160,000 or more according to the United States decennial census of 1980 or any future such census in which the sale of alcoholic beverages is lawful and in all municipalities within such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises:

(1) At any time from 11:55 P.M. on Saturdays until 2:55 A.M. on Sundays;

(2) In eating establishments which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays between the hours of 12:30 P.M. and 12:00 Midnight. As used in this paragraph, the term “eating establishment” means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food; and

(3) In inns which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays between the hours of 12:30 P.M. and 12:00 Midnight. As used in this paragraph, the term “inn” means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross income from the rental of rooms for overnight lodging.

The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title granting certain authority to a county or municipality relative to the sale of alcoholic beverages for consumption on the premises.

(m) In all municipalities or counties or in any portion of any municipality or county in which the sale of alcoholic beverages is lawful, the governing authority of the municipality or county may authorize the sale of alcoholic beverages for consumption on the premises at any time from 11:55 P.M. on Saturdays until 2:55 A.M. on Sundays by the adoption of an ordinance or resolution. The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title granting certain authority to a county or municipality relative to the sale of alcoholic beverages for consumption on the premises. Said authorization may be revoked by such governmental authority in the same manner.

(n) A municipality in which the sale of alcoholic beverages on Sunday is authorized by any other provision of law may by the adoption of an ordinance authorize the sale of alcoholic beverages in public stadiums, coliseums and auditoriums owned or controlled by it or by a public authority and having seating capacity in excess of 2,500 people on Sunday between the hours of 12:30 P.M. and midnight.

(o)(1) As used in this subsection, the term “bowling center” means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross revenues either from the rental of bowling lanes and bowling equipment or from the combination of the rental of bowling lanes and bowling equipment and the sale of prepared meals and other food products.

(2) The governing authority of any municipality or county in any portion of which the sale of alcoholic beverages is authorized may by ordinance authorize the sale of alcoholic beverages for consumption on the premises in any bowling center located within the jurisdiction of such governing authority between the hours of 12:30 P.M. and 12:00 Midnight on Sundays.

(p)(1) Notwithstanding other laws, in each county or municipality in which package sales of malt beverages and wine by retailers are



lawful, but package sales of distilled spirits by retailers are not lawful, the governing authority of the county or municipality, as appropriate, may authorize package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M., if such Sunday sales of both malt beverages and wine are approved by referendum as provided in paragraph (2) of this subsection.

(2) Any governing authority desiring to permit and regulate package sales by retailers of both malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M., pursuant to paragraph (1) of this subsection, shall so provide by proper resolution or ordinance specifying the hours during such period when such package sales may occur. Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of Sunday package sales by retailers of both malt beverages and wine to the electors of that county or municipality for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the words:

- “(    ) YES    Shall the governing authority of (name of county or municipality) be authorized to permit and regulate package sales by  
      (    ) NO    retailers of both malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M.?”

All persons desiring to vote for approval of package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. shall vote “Yes,” and all persons desiring to vote for rejection of package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. shall vote “No.” If more than one-half of the votes cast on the question are for approval of Sunday package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M., the resolution or ordinance approving such Sunday package sales by retailers of malt beverages and wine shall become effective upon the date so specified in that resolution or ordinance. The expense of the election shall be borne by the county or municipality in which the election is held. The election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State.

(3) Whenever package sales of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. are authorized by a county or municipality pursuant to this subsection, Sunday package sales by retailers of malt beverages and wine may be made only by licensed retailers that are licensed to sell by the package.

(4) The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title relative to the sale of malt beverages and wine by retailers.

(q)(1) Notwithstanding other laws, in each county or municipality in which package sales of malt beverages, wine, and distilled spirits by retailers are all lawful, the governing authority of the county or municipality, as appropriate, may authorize package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., if such Sunday sales of malt beverages, wine, and distilled spirits are approved by referendum as provided in paragraph (2) of this subsection. If the governing authority seeks authorization for Sunday sales of alcoholic beverages pursuant to this subsection, the governing authority shall seek authorization of package sales by retailers of all alcoholic beverages, including malt beverages, wine, and distilled spirits, and not of only one type of alcoholic beverage.

(2) Any governing authority desiring to permit and regulate package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., pursuant to paragraph (1) of this subsection, shall so provide by proper resolution or ordinance specifying the hours during such period when such package sales may occur. Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of Sunday package sales by retailers of malt beverages, wine, and distilled spirits to the electors of that county or municipality for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the words:

- “(    ) YES    Shall the governing authority of (name of county or municipality) be authorized to permit and regulate package sales by
- (    ) NO    retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M.?”

All persons desiring to vote for approval of package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the

hours of 12:30 P.M. and 11:30 P.M. shall vote "Yes," and all persons desiring to vote for rejection of package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M. shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., the resolution or ordinance approving such Sunday package sales by retailers of malt beverages, wine, and distilled spirits shall become effective upon the date so specified in that resolution or ordinance. If more than one-half of the votes cast on the question are for disapproval of Sunday package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., such rejection shall not nullify the prior election results for approval of Sunday package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. pursuant to subsection (p) of this Code section. The expense of the election shall be borne by the county or municipality in which the election is held. The election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State.

(3) Whenever package sales of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M. are authorized by a county or municipality pursuant to this subsection, Sunday package sales by retailers of malt beverages, wine, and distilled spirits may be made only by licensed retailers that are licensed to sell by the package.

(4) The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title relative to the sale of alcoholic beverages by retailers. (Code 1933, § 5A-507, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 540, §§ 1, 2; Ga. L. 1982, p. 521, §§ 1, 2; Ga. L. 1982, p. 1463, §§ 2, 9; Ga. L. 1982, p. 1768, § 2; Ga. L. 1982, p. 1855, §§ 1, 3; Ga. L. 1983, p. 3, § 4; Ga. L. 1983, p. 806, § 5; Ga. L. 1984, p. 22, § 3; Ga. L. 1984, p. 1683, § 1; Ga. L. 1984, p. 1685, § 1; Ga. L. 1984, p. 1691, § 1; Ga. L. 1985, p. 149, § 3; Ga. L. 1985, p. 1000, § 1; Ga. L. 1987, p. 381, § 1; Ga. L. 1988, p. 232, § 1; Ga. L. 1989, p. 1487, §§ 1, 2; Ga. L. 1990, p. 8, § 3; Ga. L. 1992, p. 1214, § 1; Ga. L. 1992, p. 2929, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 395, § 1; Ga. L. 1996, p. 830, § 1; Ga. L. 1998, p. 839, § 1; Ga. L. 1999, p. 1225, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2011, p. 49, § 1/SB 10; Ga. L. 2013, p. 767, § 1/HB 124.)

**The 2002 amendment**, effective July 1, 2002, in subsection (b), substituted "800,000" for "550,000" near the beginning and substituted "census of 2000" for "cen-



sus of 1970" near the middle.

**The 2011 amendment**, effective July 1, 2011, added subsections (p) and (q).

**The 2013 amendment**, effective July 1, 2013, added the third sentence in the ending undesignated paragraph in paragraph (q)(2).

**Law reviews.** — For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 255 (2011). For article, "Regulation of Alcoholic Beverages Generally," see 28 Ga. St. U. L. Rev. 255 (2011).

## JUDICIAL DECISIONS

**Constitutionality.** — There was a rational basis for the statutory scheme which prohibited bars from selling alcohol on Sundays, but allowed eating establishments to sell alcohol on Sundays even if

they did not serve food on Sundays; O.C.G.A. § 3-3-7 and O.C.G.A. § 3-3-20(a) did not violate equal protection and were upheld. *State v. Heretic, Inc.*, 277 Ga. 275, 588 S.E.2d 224 (2003).

### 3-3-8. Possession and transportation of lawfully purchased alcoholic beverages upon which taxes have not been paid in this state.

**Law reviews.** — For note on 2000 amendment of O.C.G.A. § 3-3-8, see 17 Ga. St. U. L. Rev. 7 (2000).

### 3-3-9. Penalty for violations of prohibitions in chapter.

## JUDICIAL DECISIONS

**Not criminal act to violate Department of Revenue regulation.** — O.C.G.A. § 3-3-9 and O.C.G.A. § 3-3-27(c)(2) provide that it is a misdemeanor to violate a prohibition or provision of the Georgia Alcoholic Beverage Code, but these provisions do not make it a criminal act to violate a Georgia Department of Revenue regulation; although the parties intended to circumvent Ga. Comp.

R. & Regs. r. 560-2-2-.38 by issuing corporate stock to an employee's wife, the stock agreement was not illegal or immoral; thus, a trial court erred in voiding the stock interest of the employee's wife, and summary judgment in favor of the corporation in the wife's action for an accounting, dissolution, and other relief was reversed. *Edwards v. Grapefields, Inc.*, 267 Ga. App. 399, 599 S.E.2d 489 (2004).

## ARTICLE 2

## PROHIBITED ACTS

### 3-3-20. Sale of alcoholic beverages on Sundays, election days, and Christmas Day.

**Law reviews.** — For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For article, "Regulation of Alcoholic Beverages Generally," see 28 Ga. St. U. L. Rev. 255 (2011).

For note on 2000 amendment of O.C.G.A. § 3-3-20, see 17 Ga. St. U. L. Rev. 4 (2000).

**JUDICIAL DECISIONS**

**Constitutionality.** — There was a rational basis for the statutory scheme which prohibited bars from selling alcohol on Sundays, but allowed eating establishments to sell alcohol on Sundays even if they did not serve food on Sundays; O.C.G.A. § 3-3-7 and O.C.G.A. § 3-3-20(a) did not violate equal protection and were upheld. *State v. Heretic, Inc.*, 277 Ga. 275, 588 S.E.2d 224 (2003).

**3-3-21. Sales of alcoholic beverages near churches, school buildings, or other sites.**

(a)(1) No person knowingly and intentionally may sell or offer to sell:

(A) Any distilled spirits in or within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds, or college campus;

(B) Any wine or malt beverages within 100 yards of any school building, school grounds, or college campus. This subparagraph shall not apply at any location for which a license has been issued prior to July 1, 1981, nor to the renewal of such license. Nor shall this subparagraph apply at any location for which a new license is applied for if the sale of wine and beer was lawful at such location at any time during the 12 months immediately preceding such application. Nothing in this subparagraph shall prohibit a grocery store licensed for the retail sale of only wine and malt beverages for consumption off the premises from selling wine or malt beverages within 100 yards of any college campus, where so permitted by resolution or ordinance of the county or municipality. As used in this subparagraph, the term “grocery store” means a retail establishment which has at least 85 percent of its total retail floor space reserved for the sale of food and other nonalcoholic items, conducts all of its sales inside the building containing its retail floor space, and meets such other criteria as may be required by the local governing authority of the county or municipality; or

(C) Any distilled spirits, wine, or malt beverages within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government therein. This paragraph shall not apply to any business having a license in effect on July 1, 1981.

(2) As used in this subsection, the term “school building” or “educational building” shall apply only to state, county, city, or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools as defined in subsection (b) of Code Section 20-2-690.

(b) Nothing contained in this Code section shall prohibit the licensing of the sale or distribution of alcoholic beverages by:

(1) Hotels of 50 rooms or more which have been in continuous operation for a period of at least five years preceding July 1, 1981;

(2) Bona fide private clubs, owning their own homes, subject to licensing under Chapter 7 of this title; and

(3) Licensees for the retail sale of alcoholic beverages for consumption on the premises only who shall be subject to regulation as to distances from churches, schools, and colleges by counties and municipalities.

(c) For purposes of this Code section, distances shall be measured by the most direct route of travel on the ground.

(d)(1) In counties having a population of not less than 175,000 nor more than 195,000, according to the United States decennial census of 1970 or any future such census, the distances provided in subparagraph (a)(1)(A) of this Code section for separation of businesses licensed under this title from churches and schools shall be measured as follows:

(A) From the property line of the tract on which is located the business regulated under this title;

(B) To the property line of the tract on which is located the church, school ground, or college campus; and

(C) Along a straight line which describes the shortest distance between the two property lines.

(2) No license in effect on April 13, 1979, shall be revoked before its date of expiration by reason of the method of measurement set out in this subsection if the license was granted in reliance on another method of measurement. No application for a license or for a renewal shall be denied by reason of the method of measurement set out in this subsection if the application is for premises for which a license was granted prior to April 13, 1979, in reliance on another method of measurement.

(e)(1) As used in this subsection, the term "housing authority property" means any property containing 300 housing units or fewer owned or operated by a housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law."

(2) No person knowingly and intentionally may sell any alcoholic beverages for consumption on the premises within 100 yards of any housing authority property. This subsection shall not apply at any location for which a license has been issued prior to July 1, 2000, nor to the renewal of such license. Nor shall this subsection apply at any location for which a new license is applied for if the sale of alcoholic beverages for consumption on the premises was lawful at such



location at any time during the 12 months immediately preceding such application. (Laws 1808, Cobb's 1851 Digest, p. 851; Code 1863, § 4448; Code 1868, § 4490; Code 1873, § 4575; Code 1882, § 4575; Ga. L. 1890-91, p. 132, § 1; Penal Code 1895, § 434; Penal Code 1910, § 435; Code 1933, § 58-601; Ga. L. 1935, p. 73, § 15B; Ga. L. 1937, p. 148, § 2; Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1945, p. 447, §§ 1, 2; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-508, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1265, § 1; Ga. L. 1981, p. 1269, § 20; Ga. L. 1998, p. 1300, § 2; Ga. L. 1999, p. 81, § 3; Ga. L. 2000, p. 1653, § 1; Ga. L. 2013, p. 897, § 2/HB 517.)

**The 2013 amendment**, effective July 1, 2013, in subparagraph (a)(1)(B), substituted a period for a semicolon at the end of the third sentence, and added the last two sentences.

**Editor's notes.** — Ga. L. 2013, p. 897, § 1/HB 517, not codified by the General Assembly, provides that: "The General Assembly finds that there are neighborhoods and downtown areas in this state near college campuses that are underserved by grocery stores, making it difficult for residents who live in such neighborhoods and downtown areas to access daily essentials and adequate food supplies and nutrition, especially those residents who do not own

automobiles. The General Assembly further finds that owners of grocery stores may be reluctant to locate such stores in areas in which it is not possible to sell packages of wine and malt beverages when such sales are permitted elsewhere in the county or municipality. The General Assembly further finds that allowing a local governing authority of a county or municipality to have local control of the distance requirements for the package sales of wine and malt beverages near college campuses will permit such local governments to determine how to best serve the public health, safety, and welfare of its citizens."

OPINIONS OF THE ATTORNEY GENERAL

**Distance from church buildings.** — The distance provisions of O.C.G.A. § 3-3-21(a)(1)(A) with regard to the location of church buildings require that the building containing the premises licensed

for the sale of distilled spirits must be located no less than 100 yards from any church building. 2002 Op. Att'y Gen. No. U2002-5.

3-3-22. Sale or furnishing of alcoholic beverages to intoxicated persons.

JUDICIAL DECISIONS

**Analogous application to health care providers.** — Duty imposed on alcohol providers to protect third parties by not serving intoxicated patrons could not likewise be imposed on doctors treating patients; thus, the doctor did not owe a duty to decedent based on the doctor's provision of a medical certificate to the truck driver that the truck driver was physically fit to drive a commercial vehicle, in a case where the truck driver died

of preexisting coronary disease three months after receiving the certificate while driving a truck and the truck then struck decedent's vehicle and killed the decedent. The doctor did not have any legal authority to restrain the truck driver for the benefit of the public, and, thus, owed no duty to the decedent to not have provided the certificate to the truck driver. *Houston v. Bedgood*, 263 Ga. App. 139, 588 S.E.2d 437 (2003).

Cited in Flores v. Exprezit! Stores 98-Georgia, LLC, 289 Ga. 466, 713 S.E.2d 368 (2011).

**3-3-23. Furnishing to, purchase of, or possession by persons under 21 years of age of alcoholic beverages; use of false identification; proper identification; dispensing, serving, selling, or handling by persons under 21 years of age in the course of employment; seller's actions upon receiving false identification.**

**Cross references.** — Motor carriers under age 21 drinking alcohol, prohibited from transporting passengers § 40-1-108.

**JUDICIAL DECISIONS**

**ANALYSIS**

GENERAL CONSIDERATION  
CONSTITUTIONALITY

**General Consideration**

**O.C.G.A. § 51-1-6 does not establish a cause of action** based on the violation of O.C.G.A. § 3-3-23. Lumpkin v. Mellow Mushroom, 256 Ga. App. 83, 567 S.E.2d 728 (2002).

**“Force and arms” was not an element of the offenses** of statutory rape, O.C.G.A. § 16-6-3, child molestation, O.C.G.A. § 16-6-4, or furnishing alcohol to a minor, O.C.G.A. § 3-3-23, and since an indictment was couched in the words of the statutes and correctly informed defendant of the offenses charged, the indictment’s allegation of use of force was mere surplusage and was properly disregarded. Colon v. State, 275 Ga. App. 73, 619 S.E.2d 773 (2005).

**Liability for subsequent death of under aged drinker.** — In a negligence action, a drinking establishment breached its duty, under O.C.G.A. § 3-3-23(a)(1), to abstain from serving alcohol to an under aged drinker who later died from injuries sustained from falling from a jeep. Lumpkin v. Mellow Mushroom, 256 Ga. App. 83, 567 S.E.2d 728 (2002).

**City ordinance was unconstitutional as conflicting with statute.** — Trial court erred by rejecting entertainers’ challenge under the uniformity clause, Ga. Const. 1983, Art. III, Sec.VI, Para. IV(a), to a city’s ordinance prohibiting

persons aged 18 to 21 from entering adult entertainment establishments where alcohol was served because the ordinance conflicted with O.C.G.A. §§ 3-3-23 and 3-3-24(a), allowing persons over 18 to work in such establishments. Willis v. City of Atlanta, 285 Ga. 775, 684 S.E.2d 271 (2009).

**Administration of alco-sensor test not improper.** — Defendant’s claim that the administration of an alco-sensor test was improper because a positive alco-sensor of a minor established guilt of the crime of minor in possession of alcohol by consumption under O.C.G.A. § 3-3-23 was incorrect; O.C.G.A. § 3-3-23(a) explicitly provided that underage alcohol consumption was not a crime if the consumption was otherwise authorized by law. Brown v. State, 299 Ga. App. 402, 683 S.E.2d 614 (2009).

**Evidence sufficient to support conviction of “underage consumption of alcohol,” etc.**

In accord with Lee v. State. See Baggs v. State, 265 Ga. App. 282, 593 S.E.2d 734 (2004).

Defendant’s conviction for underage drinking of an alcoholic beverage was upheld on appeal since the police officer smelled alcohol on the defendant’s breath in the county wherein the defendant was arrested, which was enough to establish

venue, pursuant to O.C.G.A. § 17-2-2(h), and because the defendant never produced evidence that a parent or guardian gave the defendant the beer that the defendant admitted to drinking and that the possession of the beer was in the home and presence of a parent or guardian, the defendant failed to establish the affirmative defense under O.C.G.A. § 3-3-23(a)(2). *Burchett v. State*, 283 Ga. App. 271, 641 S.E.2d 262 (2007).

Crimes of possession of alcoholic beverage by underage person and furnishing alcohol to minor do not require state to prove certain alcohol level in defendants. *State v. Ealum*, 283 Ga. App. 799, 643 S.E.2d 262 (2007).

Evidence was sufficient to support defendant's conviction for furnishing alcohol to a minor. The victim testified that defendant gave the victim, a minor, alcohol to drink in defendant's home, and the victim's parent testified that when the victim returned home, the victim's eyes were bloodshot and the parent could smell the alcohol on the victim's breath. *Dockery v. State*, 309 Ga. App. 584, 711 S.E.2d 100 (2011).

**Charge erroneously dismissed.** — The trial court erroneously dismissed an accusation charging the defendant with possession of alcohol by an underage person in violation of O.C.G.A. § 3-3-23(a)(2) based solely on the defendant's completion of an alcohol education course, without providing notice to the state or the defendant, and without conducting a sentencing hearing, as such impermissibly interfered with the state's right to prosecute and no defect on the face of the accusation existed; moreover, the trial court erred in withdrawing the defendant's no contest plea absent a formal defense motion seeking the plea. *State v. Carr*, 287 Ga. App. 691, 652 S.E.2d 597 (2007).

**Refusal of instruction on requirement to prove defendant's knowledge.** — When defendant was prosecuted for serving alcohol to a minor, under O.C.G.A. § 3-3-23(a)(1), it was not error

for a trial court to refuse to give defendant's proffered instructions on the requirement to prove defendant's knowledge of the age of the person to whom alcohol was served or on mistake of fact because the jury was instructed, inter alia, on the requirement that defendant knowingly served alcohol to a minor, and, pursuant to § 3-3-23(h), that, when a reasonable person could reasonably be in doubt as to whether a person to whom alcohol was served was 21 years old or older, it was a defendant's duty to request identification and that defendant's failure to do so could be considered in determining if defendant knowingly furnished alcohol to a minor. *Butler v. State*, 298 Ga. App. 129, 679 S.E.2d 361 (2009).

**Reversal of conviction for failure to give requested instruction.** — Defendant's conviction for serving alcohol to a minor, under O.C.G.A. § 3-3-23(a)(1), was reversed because: (1) the state relied on circumstantial evidence to show that defendant knowingly served alcohol to a minor; and (2) the trial court erroneously refused defendant's request for an instruction on circumstantial evidence under O.C.G.A. § 24-4-6. *Butler v. State*, 298 Ga. App. 129, 679 S.E.2d 361 (2009).

**Cited in** *Beaman v. City of Peachtree City*, 256 Ga. App. 62, 567 S.E.2d 715 (2002); *David v. State*, 261 Ga. App. 468, 583 S.E.2d 135 (2003); *Penny v. McBride*, 282 Ga. App. 590, 639 S.E.2d 561 (2006); *Beckom v. State*, 286 Ga. App. 38, 648 S.E.2d 656 (2007).

### Constitutionality

**Distinctions do not violate equal protection.** — O.C.G.A. § 3-3-23 is constitutional and does not violate equal protection since the General Assembly made rational distinctions with respect to the possession of alcohol and recognized that young people were more accountable under certain supervised settings or conditions. *Hanson v. State*, 275 Ga. 470, 569 S.E.2d 513 (2002).



**3-3-23.1. Procedure and penalties upon violation of Code Section 3-3-23.**

(a) It is unlawful for any person knowingly to violate any prohibition contained in Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchasing, attempting to purchase, and possession of alcoholic beverages by, a person under 21 years of age.

(b)(1) Any person convicted of violating any prohibition contained in subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor, except that any person convicted of violating paragraph (2) of subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor and shall be punished by not more than six months' imprisonment or a fine of not more than \$300.00, or both and except that any person convicted of violating paragraph (4) of subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor of a high and aggravated nature.

(2) Any person convicted of violating any prohibition contained in subsection (a) of Code Section 3-3-23 shall, upon the second or subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature, except that any person convicted of violating paragraph (2) of subsection (a) of Code Section 3-3-23 shall, upon the second or subsequent conviction, be guilty of a misdemeanor.

(3) In addition to any other penalty provided for in paragraphs (1) and (2) of this subsection, the driver's license of any person convicted of attempting to purchase an alcoholic beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23 upon the first conviction shall be suspended for six months and upon the second or subsequent conviction shall be suspended for one year.

(c) Whenever any person who has not been previously convicted of any offense under this Code section or under any other law of the United States or this or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of paragraph (2) or (3) of subsection (a) of Code Section 3-3-23, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require. The terms of probation shall preferably be such as require the person to undergo a comprehensive rehabilitation program (including, if necessary, medical treatment), not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and with knowledge of the gains and benefits which can be achieved by being a good member of society. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of the

terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.

(d) Unless the officer has reasonable cause to believe such person is intoxicated, a law enforcement officer may arrest by issuance of a citation, summons, or accusation a person accused of violating any provision of Code Section 3-3-23. The citation, summons, or accusation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought before the court to answer the charges contained within the citation, summons, or accusation and the charge of his or her failure to appear as required. Nothing in this subsection shall be construed to invalidate an otherwise valid arrest by citation, summons, or accusation of a person who is intoxicated.

(e) A law enforcement officer arresting a person by the issuance of a citation, summons, or accusation under subsection (d) of this Code section may require any such person having a driver's license or instruction permit to deposit such license or permit with the arresting officer in order to ensure the appearance of such person to answer the charges against him or her. The procedures and rules connected with the acceptance of such license or permit and subsequent disposition of the case shall be the same as provided for the acceptance of a driver's license as bail on arrest for traffic offenses pursuant to Code Section 17-6-11.

(f) In addition to any other punishment or sentence, the court may order all persons convicted under subsection (b) of this Code section or sentenced under subsection (c) of this Code section to complete a DUI Alcohol or Drug Use Risk Reduction Program prescribed by the Department of Driver Services within 120 days of such conviction or sentence. Failure to complete such program within 120 days shall be contempt of court and shall be punished by a fine of not more than \$300.00 or 20 days imprisonment, or both. If the conviction or sentence results from a charge of unlawful possession of alcoholic beverages while operating a motor vehicle, the court shall report such conviction or sentence to the Department of Driver Services within ten days after conviction or

sentencing. (Ga. L. 1981, p. 862, § 3; Code 1933, § 5A-9901.1, enacted by Ga. L. 1981, p. 1269, § 64; Ga. L. 1982, p. 3, § 3; Ga. L. 1985, p. 753, §§ 2, 4; Ga. L. 1985, p. 782, § 3; Ga. L. 1992, p. 2746, § 1; Ga. L. 1997, p. 1085, § 2; Ga. L. 1998, p. 1106, § 1; Ga. L. 2002, p. 415, § 3; Ga. L. 2005, p. 334, § 2-1/HB 501; Ga. L. 2006, p. 206, § 7/HB 1248.)

**The 2002 amendment**, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted “Department of Motor Vehicle Safety” for “Department of Public Safety” in the last sentence of subsection (f).

**The 2005 amendment**, effective July 1, 2005, substituted “Department of Driver Services” for “Department of Human Resources” and substituted “Depart-

ment of Driver Services” for “Department of Motor Vehicle Safety” in subsection (f).

**The 2006 amendment**, effective July 1, 2006, substituted “citation, summons, or accusation” for “citation” throughout subsections (d) and (e); and substituted “any provision” for “only paragraph (2) of subsection (a)” near the beginning of subsection (d).

### **3-3-24. Dispensing, serving, selling, or taking orders for alcoholic beverages by persons under 18 years of age.**

## **JUDICIAL DECISIONS**

**City ordinance was unconstitutional as conflicting with statute.** — Trial court erred by rejecting entertainers’ challenge under the uniformity clause, Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a), to a city’s ordinance prohibiting persons aged 18 to 21 from entering adult

entertainment establishments where alcohol was served because the ordinance conflicted with O.C.G.A. §§ 3-3-23 and 3-3-24(a), allowing persons over 18 to work in such establishments. *Willis v. City of Atlanta*, 285 Ga. 775, 684 S.E.2d 271 (2009).

### **3-3-27. Unlawful manufacture, transportation, receipt, possession, sale, or distribution of alcoholic beverages; failure to file proper reports or bonds or pay fees; declaration of apparatus used in unlawful manufacture of alcoholic beverages as contraband; penalties.**

## **JUDICIAL DECISIONS**

**Not criminal act to violate Department of Revenue regulation.** — O.C.G.A. § 3-3-9 and O.C.G.A. § 3-3-27(c)(2) provide that it is a misdemeanor to violate a prohibition or provision of the Georgia Alcoholic Beverage Code, but these provisions do not make it a criminal act to violate a Georgia Department of Revenue regulation; although the parties intended to circumvent Ga. Comp.

R. & Regs. r. 560-2-2-.38 by issuing corporate stock to an employee’s wife, the stock agreement was not illegal or immoral; thus, a trial court erred in voiding the stock interest of the employee’s wife, and summary judgment in favor of the corporation in the wife’s action for an accounting, dissolution, and other relief was reversed. *Edwards v. Grapefields, Inc.*, 267 Ga. App. 399, 599 S.E.2d 489 (2004).



**3-3-28. Reuse, counterfeiting, or forging of tax stamps.**

Reserved. Repealed by Ga. L. 2005, p. 528, § 1/HB 558, effective July 1, 2005.

**Editor's notes.** — This Code section 103, § 11; Code 1933, § 5A-515, enacted was based on Ga. L. 1937-38, Ex. Sess., p. by Ga. L. 1980, p. 1573, § 1.

**3-3-30. Storage and distribution of alcoholic beverages by corporations granted the privilege of establishing, operating, and maintaining foreign trade zones.**

**Law reviews.** — For note on 2000 enactment of O.C.G.A. §§ 3-6-30 to 3-6-32, see 17 Ga. St. U. L. Rev. 7 (2000).

**3-3-33. Vaporized form of alcoholic beverages and alcohol vaporizing devices prohibited.**

(a) As used in this Code section, the term:

(1) "Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

(2) "Licensed premises" means any premises in which alcoholic beverages are sold or dispensed for consumption on the premises and shall include any premises which are required by law to be licensed to sell or dispense alcoholic beverages for consumption on the premises.

(3) "Operator" means an owner, license holder, operator, manager, or person in charge of any licensed premises.

(b)(1) No person shall purchase, offer for sale or use, sell, or use any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device. This paragraph shall not apply to a product that contains alcohol as otherwise lawfully prescribed by a health care practitioner who is licensed under Title 43.

(2) No person shall own or possess any alcohol vaporizing device, including but not limited to any machine known as an Alcohol Without Liquid (AWOL) machine. This paragraph shall not apply to any nebulizer or atomizer used to supply a product that contains alcohol as otherwise lawfully prescribed by a health care practitioner who is licensed under Title 43.

(c) No operator shall keep or allow to be kept on the licensed premises thereof any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device.

(d) Any person convicted of a violation of this Code section shall be guilty of a misdemeanor. Any person convicted of a violation of this Code section involving the offer for sale or use to a person under the age of 21 shall be guilty of a misdemeanor, except that upon the second or subsequent conviction such person so convicted shall be guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 3-3-33, enacted by Ga. L. 2008, p. 346, § 1/HB 1066.)

**Effective date.** — This Code section became effective July 1, 2008.

OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting required for violators.** — Offenses arising under O.C.G.A. § 3-3-33 are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att’y Gen. No. 2009-1.

CHAPTER 4

DISTILLED SPIRITS

Article 2		Sec.	
State License Requirements and Regulations for Manufacture, Distribution, and Package Sales			manufacture of distilled spirits from agricultural products other than perishable fruits; storage; educational and promotional tours.
Sec.			<b>Article 5</b>
3-4-20.	Levy and amount of state occupational license tax; application.		<b>Sales by the Drink</b>
3-4-22.	Filing of bonds by applicants for licenses generally.		PART 2
3-4-23.	Certificate of residence required for retail dealer’s license; intention of Code section.		LICENSES
3-4-24.	Issuance to fruit growers of license to manufacture distilled spirits; storage and disposition; limitations upon manufacture and sale; issuance of manufacturer’s or distiller’s license in certain counties or municipalities; educational and promotional tours.	3-4-111.	Sale by wholesalers to licensees; purchase by licensees from wholesalers; declaration of contraband.
3-4-24.1.	Distiller’s license authorizing	3-4-111.1.	Occupational license tax upon retail consumption dealers; annual payment; application.
			<b>Article 8</b>
			<b>Tastings</b>
		3-4-180.	Tastings of distilled spirits; definitions; general provisions.

ARTICLE 2

STATE LICENSE REQUIREMENTS AND REGULATIONS FOR  
MANUFACTURE, DISTRIBUTION, AND PACKAGE SALES

**3-4-20. Levy and amount of state occupational license tax; ap-  
plication.**

(a) An annual occupational license tax is imposed upon each distiller, manufacturer, broker, importer, wholesaler, fruit grower, and retail dealer of distilled spirits in this state, as follows:

- (1) Upon each distiller and manufacturer ..... \$ 1,000.00
- (2) Upon each wholesale dealer ..... 1,000.00
- (3) Upon each importer ..... 1,000.00
- (4) Upon each fruit grower ..... 500.00
- (5) Upon each broker ..... 100.00
- (6) Upon each retail dealer ..... 100.00
- (7) Upon each special event use permit applicant ..... 100.00

(b) An annual occupational license tax shall be paid for each place of business operated. An application for the applicable license required pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated. (Ga. L. 1937-38, Ex. Sess., p. 103, §§ 5, 9; Ga. L. 1972, p. 207, § 4; Ga. L. 1974, p. 1125, § 1; Ga. L. 1979, p. 923, § 2; Code 1933, § 5A-2501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 30; Ga. L. 2012, p. 827, § 2/HB 1066.)

**The 2012 amendment**, effective July 1, 2012, designated the existing provisions as subsection (a); added paragraph (a)(7); and added subsection (b).

**3-4-22. Filing of bonds by applicants for licenses generally.**

(a) All applicants for all licenses shall file with the commissioner, along with each initial application, a bond:

- (1) Conditioned to pay all sums which may become due by the applicant to this state as taxes, license fees, or otherwise, arising out of the operation of the business for which licensure is sought; and
- (2) Conditioned to pay all penalties which may be imposed upon the applicant for failure to comply with the laws and rules and regulations pertaining to distilled spirits.



The surety for the bonds shall be a surety company licensed to do business in this state, and the bonds shall be in such form as may be required by the commissioner and may be for a term of up to five calendar years.

(b) The bonds shall be in the following calendar year amounts:

- (1) For distillers and manufacturers, \$10,000.00;
- (2) For wholesale dealers and importers, \$5,000.00; and
- (3) For retail dealers and brokers, \$2,500.00.

(c) All applicants for annual renewal of licenses other than retail licenses must file an annual bond or have a multiyear bond on file with the department that extends at least through the end of the calendar year for which renewal is sought. Such bonds must meet the same conditions as those filed with the initial application. (Ga. L. 1937-38, Ex. Sess., p. 103, § 10; Ga. L. 1978, p. 1426, § 1; Code 1933, § 5A-2503, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 31; Ga. L. 2006, p. 206, § 8/HB 1248.)

**The 2006 amendment**, effective July 1, 2006, added “and may be for a term of up to five calendar years” at the end of subsection (a); inserted “calendar year” in the introductory language of subsection (b); and added subsection (c).

### **3-4-23. Certificate of residence required for retail dealer’s license; intention of Code section.**

(a) No retail dealer’s license shall be issued to any person unless an application is filed with the commissioner, accompanied by a certificate by the judge of the probate court of the county of the applicant’s residence certifying that the applicant has been a bona fide resident of the county or municipality for at least 12 months immediately preceding the application and is a resident of the county or municipality where distilled spirits may be legally sold under this chapter.

(b) It is the purpose and intention of this Code section to prevent the sale of distilled spirits in any county or municipality other than those where distilled spirits may be legally sold under this chapter. (Ga. L. 1937-38, Ex. Sess., p. 103, § 24; Ga. L. 1972, p. 207, § 10; Code 1933, § 5A-2504, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 32; Ga. L. 2006, p. 206, § 9/HB 1248.)

**The 2006 amendment**, effective July 1, 2006, deleted “or tax stamps for distilled spirits” and substituted “issued” for “sold” near the beginning of subsection (a).

**3-4-24. Issuance to fruit growers of license to manufacture distilled spirits; storage and disposition; limitations upon manufacture and sale; issuance of manufacturer's or distiller's license in certain counties or municipalities; educational and promotional tours.**

(a) The commissioner may issue a license to a fruit grower authorizing the grower to manufacture distilled spirits from perishable fruits grown in this state.

(b) If any distilled spirits are manufactured as permitted by this Code section in any county, municipality, or county area exclusive of certain incorporated areas, as the case may be, in which the distilled spirits are not to be sold under the terms of this chapter, the licensee shall immediately store the distilled spirits or alcohol in a warehouse or warehouses designated by the commissioner to be sold or disposed of under the supervision of the commissioner in states, counties, or municipalities permitting the legal sale of distilled spirits or alcohol.

(c) It is unlawful for the licensee to sell or dispose of any such distilled spirits or alcohol:

(1) In any municipality, county, or unincorporated area of a county in which the sale of distilled spirits or alcohol is prohibited by this chapter; or

(2) To any person not holding an importer's, broker's, or wholesaler's license issued pursuant to this chapter or by another state.

(d) A manufacturer's or distiller's license may be issued pursuant to this Code section to a fruit grower for the manufacture of distilled spirits in any county or municipality of this state that has approved either the package sale of distilled spirits or the sale of distilled spirits by the drink, or both, as provided in this chapter.

(e) A manufacturer or distiller issued a license pursuant to this Code section may provide educational and promotional tours. (Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1972, p. 207, § 4; Code 1933, § 5A-2505, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2012, p. 1028, § 1/SB 114.)

**The 2012 amendment**, effective July 1, 2012, in paragraph (c)(2), substituted "an importer's, broker's, or wholesaler's" for "a wholesale or retail" and added "or by another state" to the end; in subsection (d), at the beginning, substituted "A manufacturer's" for "No manufacturer's", sub-

stituted "may" for "shall", inserted "to a fruit grower", substituted "approved either" for "not approved", and inserted "or the sale of distilled spirits by the drink, or both," near the end; and added subsection (e).

**3-4-24.1. Distiller's license authorizing manufacture of distilled spirits from agricultural products other than perishable fruits; storage; educational and promotional tours.**

(a) The commissioner may issue a license authorizing the manufacture of distilled spirits from agricultural products other than perishable fruits grown in this state.

(b) If any distilled spirits are manufactured as permitted by this Code section in any county, municipality, or county area exclusive of certain incorporated areas, as the case may be, in which the distilled spirits are not to be sold under the terms of this chapter, the licensee shall immediately store the distilled spirits or alcohol in a warehouse or warehouses designated by the commissioner to be sold or disposed of under the supervision of the commissioner in states, counties, or municipalities permitting the legal sale of distilled spirits or alcohol.

(c) It is unlawful for the licensee to sell or dispose of any such distilled spirits or alcohol:

(1) In any municipality, county, or unincorporated area of a county in which the sale of distilled spirits or alcohol is prohibited by this chapter; or

(2) To any person not holding an importer's, broker's, or wholesaler's license issued pursuant to this chapter or by another state.

(d) A manufacturer's or distiller's license may be issued pursuant to this Code section for the manufacture of distilled spirits from agricultural products other than perishable fruits in any county or municipality of this state that has approved either the package sale of distilled spirits or the sale of distilled spirits by the drink, or both, as provided in this chapter.

(e) A manufacturer or distiller issued a license pursuant to this Code section may provide educational and promotional tours. (Code 1981, § 3-4-24.1, enacted by Ga. L. 2012, p. 1028, § 2/SB 114.)

**Effective date.** — This Code section became effective July 1, 2012.



ARTICLE 4  
EXCISE TAXATION

## PART 1

## STATE

**3-4-60. Levy and amount of tax.**

## RESEARCH REFERENCES

**ALR.** — Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors, 116 ALR5th 149.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

ARTICLE 5  
SALES BY THE DRINK

## PART 2

## LICENSES

**3-4-111. Sale by wholesalers to licensees; purchase by licensees from wholesalers; declaration of contraband.**

(a) Those persons who are duly licensed as wholesalers of distilled spirits under this title may sell distilled spirits at wholesale prices to any person or persons licensed as provided in this article. Persons licensed under this article may purchase distilled spirits from a licensed wholesaler at wholesale prices.

(b) Any distilled spirits possessed, sold, or offered for sale by a retail dealer or retail consumption dealer which are purchased or otherwise acquired from any person other than a wholesale dealer authorized to do business under this chapter are declared to be contraband and shall be seized and disposed of by the commissioner in the manner provided in this title. (Ga. L. 1964, p. 771, § 1; Ga. L. 1969, p. 1140, §§ 1-4; Ga. L. 1972, p. 207, § 13; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-2905, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2012, p. 827, § 3/HB 1066.)

**The 2012 amendment**, effective July 1, 2012, designated the existing provisions as subsection (a) and added subsection (b).

**3-4-111.1. Occupational license tax upon retail consumption dealers; annual payment; application.**

(a) An annual occupational license tax in the amount of \$100.00 is imposed upon each retail consumption dealer in this state.

(b) The annual occupational license tax shall be paid for each place of business operated. An application for a retail consumption dealer's license required pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated. (Code 1933, § 5A-2921, enacted by Ga. L. 1981, p. 1269, § 39; Ga. L. 2012, p. 827, § 4/HB 1066.)

**The 2012 amendment**, effective July 1, 2012, substituted the present provisions of subsection (b) for the former provisions which read: "Every applicant for a retail consumption dealer's license shall file with the commissioner, along with each application, a bond conditioned to pay all sums which may become due by the applicant to this state as taxes, license fees, or otherwise by reason of or incident to the operation of the business for which

licensure is sought and conditioned in order to pay all penalties which may be imposed upon the applicant for failure to comply with the laws, rules, and regulations pertaining to distilled spirits. Surety for the bond shall be a surety company licensed to do business in this state and the bond shall be in such form as may be required by the commissioner. Such bond shall be in the amount of \$2,500.00."

**ARTICLE 8****TASTINGS**

**Effective date.** — This article became effective July 1, 2012.

**3-4-180. Tastings of distilled spirits; definitions; general provisions.**

(a) As used in this Code section, the term:

(1) "Free tastings" means the provision of complimentary samples of distilled spirits to the public for consumption on the premises of a distiller.

(2) "Sample" means one-half of one ounce of distilled spirits.

(b) The commissioner shall, upon proper application therefor, issue an annual permit to any distiller licensed in this state authorizing such distiller to conduct educational and promotional distillery tours which may include free tastings on the premises by members of the public of tax-paid varieties of distilled spirits manufactured by such distiller.

(c) No distiller conducting free tastings under this Code section shall provide, directly or indirectly, more than the one sample to a person in one calendar day. Free tastings shall be held in a designated tasting area on the premises of the distiller, and all open bottles shall be visible at all times. (Code 1981, § 3-4-180, enacted by Ga. L. 2012, p. 682, § 1/HB 514.)

CHAPTER 5

MALT BEVERAGES

Article 1

General Provisions

- Sec.  
3-5-4. Production of malt beverages in private residences; consumption; home-brew special events.
- 3-5-5. Retail sale of kegs; required labeling; removal of labels.

Article 2

State License Requirements and Regulations for Manufacture, Distribution, and Sale

- Sec.  
3-5-20. Levy and amount of state occupational license tax; annual reporting.
- 3-5-36. “Brewpub” exception to three-tier distribution system.

**Law reviews.** — For note, “Beer, Liquor, or a Little Bit of Both? Getting to the Bottom of Properly Classifying Flavored Malt Beverages in the United States and Australia,” see 39 Ga. J. Int’l & Comp. L. 471 (2011).

ARTICLE 1

GENERAL PROVISIONS

**3-5-4. Production of malt beverages in private residences; consumption; home-brew special events.**

(a)(1) Malt beverages may be produced by a person in his or her private residence subject to the limitations provided in this Code section.

(2) The total quantity of malt beverages that may be produced in any private residence shall be as follows:

(A) Not more than 100 gallons per calendar year if there is only one person of legal drinking age living in such residence; or

(B) Not more than 200 gallons per calendar year if there are two or more persons of legal drinking age living in such residence;

provided, however, that no more than 50 gallons shall be produced in a 90 day period.



(b) Except as provided for in subsection (d) of this Code section, malt beverages produced in compliance with this Code section may only be consumed at the residence where produced and only by persons of legal drinking age.

(c) Malt beverages produced under the provisions of this Code section may be removed from the residence where produced for transportation and delivery by the producer for use at home-brew special events in a quantity not to exceed 25 gallons, provided that such malt beverages are securely sealed in one or more containers and clearly labeled with the following information:

- (1) The name of the producer;
- (2) The address of the residence at which it was produced;
- (3) The name and address of the home-brew special event to which it is being transported; and
- (4) The permit number under which the home-brew special event is being held.

If transported in a motor vehicle, the securely sealed containers shall be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

(d)(1) Notwithstanding any other provision of this title to the contrary, in all counties and municipalities in which the sale of malt beverages is lawful, the local governing authority may issue a home-brew special event permit for the holding of home-brew special events, including contests, tastings, and judgments at locations not otherwise licensed under this title. The local governing authority shall specify by ordinance or resolution the events that shall qualify as home-brew special events. A home-brew special event permit shall cost \$50.00 and shall be valid for not more than six events per calendar year.

(2) Consumption of malt beverages at home-brew special events shall be limited solely to malt beverages produced pursuant to this Code section, and such malt beverages shall only be consumed by the participants in and judges of the home-brew special events.

(3) Any local governing authority that issues home-brew special event permits shall adopt ordinances or resolutions governing home-brew special events.

(e) Malt beverages produced pursuant to this Code section shall not be sold, offered for sale, or made available for consumption by the general public. (Code 1981, § 3-5-4, enacted by Ga. L. 1993, p. 537, § 1; Ga. L. 2013, p. 617, § 1/HB 99.)

**The 2013 amendment**, effective July 1, 2013, rewrote this Code section, which read: “(a) A head of a household may produce 50 gallons of malt beverages in any one calendar year to be consumed within his or her own household without any requirement to be licensed for such purpose. No malt beverages produced under this subsection shall be sold or offered

for sale. Malt beverages so produced shall not be subject to any excise tax imposed by this chapter.

“(b) For purposes of this Code section, a single person who is not a dependent of another person for purposes of Georgia income taxation shall be considered a head of a household.”

### **3-5-5. Retail sale of kegs; required labeling; removal of labels.**

(a) As used in this Code section, the term:

(1) “Keg” means any brewery-sealed container or barrel containing, by liquid volume, more than two gallons of malt beverage.

(2) “Retail dealer,” “retail licensee,” or “licensee” means a person holding either a retail dealer license, a permit issued by the commissioner authorizing the sale of alcoholic beverages for consumption only on the premises for a period not to exceed one day, or a beverage alcohol caterer license.

(b) No person licensed under this chapter shall sell malt beverages at retail by the keg except as provided in subsections (c), (d), and (e) of this Code section. The commissioner may take punitive action against violators, up to and including revocation of the state retail dealer’s license of any licensed retail dealer who fails to comply with this Code section. The undertaking of any punitive action allowed under this Code section shall not prohibit criminal prosecution for sale to underage persons.

(c) Each retail licensee selling kegs containing malt beverages for consumption off licensed premises shall require each keg purchaser to present a Georgia driver’s license or other proper identification at the time of purchase. The licensee shall record for each keg sale: the date of sale; the size of keg; the keg identification number; the amount of container deposit; the name; address; date of birth of the purchaser; and the form of identification presented by such purchaser. The purchaser shall sign a statement at the time of purchase attesting to the accuracy of the purchaser’s name and address, the location where the contents of the keg will be consumed, and acknowledging that a violation of Code Section 3-3-23, as it relates to furnishing alcoholic beverages to persons under the age of 21 years, may result in civil liability, criminal prosecution, or both. The licensee shall retain the identification form and purchaser’s signed statement attesting to the accuracy of the purchaser’s name and address and acknowledging that a violation of Code Section 3-3-23, as it relates to furnishing alcoholic beverages to persons under the age of 21 years, may result in civil liability, criminal

prosecution, or both, for a minimum of six months following the sale of the keg.

(d) Each keg sold at retail for consumption off licensed premises shall be labeled with the name and address of the retail licensee, the keg identification number, and the state alcohol license number of the business. The Department of Revenue will prescribe the form of registration label or tag to be used for this purpose. The registration label or tag shall be supplied by the Department of Revenue without fee and securely affixed to the keg by the licensee making the sale. In addition to the label or tag, the Department of Revenue shall provide guidelines to the licensee on the information to be recorded on the identification form required under subsection (c) of this Code section.

(e) The licensee shall record the date of return of the keg on the identification form required under subsection (c) of this Code section. If there is no label or tag affixed to the keg or if the identification number is not legible, the licensee shall indicate this fact on the identification form required under subsection (c) of this Code section. The licensee shall not refund a deposit for a keg that is returned without the required label or tag and identification number intact and legible.

(f) The removal of the required label shall be unlawful until such time that it is lawfully returned to the retailer by the purchaser. Possession of a keg without the required label and identification number shall be unlawful and subject to penalty pursuant to Code Section 3-3-9. (Code 1981, § 3-5-5, enacted by Ga. L. 2001, p. 1100, § 1; Ga. L. 2002, p. 415, § 3.)

**Effective date.** — This Code section became effective July 1, 2001.  
**The 2002 amendment,** effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted “As

used in this Code section” for “As used in Code section 3-5-5” in the introductory language of subsection (a) and revised punctuation in paragraph (a)(2).

ARTICLE 2

STATE LICENSE REQUIREMENTS AND REGULATIONS FOR  
MANUFACTURE, DISTRIBUTION, AND SALE

**3-5-20. Levy and amount of state occupational license tax; annual reporting.**

(a) An annual occupational license tax is imposed upon each brewer, manufacturer, broker, importer, wholesaler, and retail dealer of beer in this state, as follows:

- (1) Upon each brewer .....\$ 1,000.00
- (2) Upon each wholesale dealer ..... 500.00



(3) Upon each importer .....	500.00
(4) Upon each broker .....	50.00
(5) Upon each retail dealer .....	50.00
(6) Upon each brewpub operator .....	1,000.00
(7) Upon each special event use permit applicant .....	50.00

(b) An annual occupational license tax shall be paid for each place of business operated. An application for the applicable license required pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated. (Ga. L. 1935, p. 73, § 5; Ga. L. 1937, p. 148, § 1; Ga. L. 1937-38, Ex. Sess., p. 173, § 1; Ga. L. 1939, p. 101, § 1; Ga. L. 1949, Ex. Sess., p. 5, § 1; Ga. L. 1951, p. 356, § 1; Ga. L. 1955, Ex. Sess., p. 23, § 1; Code 1933, § 5A-4501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1995, p. 734, § 2; Ga. L. 2012, p. 827, § 5/HB 1066.)

**The 2012 amendment**, effective July 1, 2012, added paragraph (a)(7) and substituted the present provisions of subsection (b) for the former provisions which read: “The tax provided in this Code sec-

tion shall be paid on each place of business operated and shall be paid to the commissioner when the licensee enters business and annually thereafter so long as the business is operated and conducted.”

**3-5-28. Delivery, receipt, and storage of malt beverages sold by wholesale dealers to retail dealers.**

JUDICIAL DECISIONS

**Transportation of malt beverages.** — Contrary to the argument of the two associations, O.C.G.A. § 3-5-28 prohibited a retailer from picking up malt beverages at the wholesaler’s premises; thus, the Georgia Department of Revenue’s reg-

ulation that required a retailer to take delivery of alcoholic beverages only at its place of business was not in conflict with the statute and was not invalid. *Ga. Oilmen’s Ass’n v. Ga. Dep’t of Revenue*, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

**3-5-30. Brewer-wholesaler relations — Purpose; intent; enforcement.**

JUDICIAL DECISIONS

**Regulations consistent with statute permitted.** — Georgia Department of Revenue’s regulations challenged by the two associations, regarding the distribution of malt beverages in Georgia, were not invalid on the ground that they were

unauthorized since the regulations at issue were consistent with the various policies set out in O.C.G.A. § 3-5-30. *Ga. Oilmen’s Ass’n v. Ga. Dep’t of Revenue*, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

### **3-5-31. Brewer-wholesaler relations — License requirement for shippers of beer; application.**

#### **JUDICIAL DECISIONS**

**Exclusive distributor permitted.** — O.C.G.A. § 3-5-31(a) permitted the Georgia Department of Revenue to implement a regulation that named one licensed wholesaler in each sales territory who, within the territory, was the exclusive distributor of a brand of malt beverage within the sales territory, as the plain language of the statute permitted the department to do so. *Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue*, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

### **3-5-36. "Brewpub" exception to three-tier distribution system.**

A limited exception to the provisions of Code Sections 3-5-29 through 3-5-32 providing a three-tier system for the distribution and sale of malt beverages shall exist for owners and operators of brewpubs, subject to the following terms and conditions:

(1) No individual shall be permitted to own or operate a brewpub without first obtaining a proper license from the commissioner in the manner provided in this title, and each brewpub licenseholder shall comply with all other applicable state and local license requirements;

(2) A brewpub license authorizes the holder of such license to:

(A) Manufacture on the licensed premises not more than 10,000 barrels of beer in a calendar year solely for retail sale on the premises;

(B) Operate an eating establishment that shall be the sole retail outlet for such beer and may offer for sale any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this title, including wine, distilled spirits, and malt beverages, provided that such alcoholic beverages are purchased from a licensed wholesaler for consumption on the premises only; and, provided, further, that in addition to draft beer manufactured on the premises, each brewpub licensee shall offer for sale commercially available canned or bottled malt beverages from licensed wholesalers; and

(C) Notwithstanding any other provision of this paragraph, sell up to a maximum of 5,000 barrels annually of such beer to licensed wholesale dealers for distribution to retailers and retail consumption dealers;

(3) Possession of a brewpub license shall not prevent the holder of such license from obtaining a retail consumption dealer's license or a retailer's license for the same premises;

(4) A brewpub license does not authorize the holder of such license to sell alcoholic beverages by the package for consumption off the premises;

(5) A brewpub licensee shall not offer or permit any free sampling of beer by its customers on the premises of a brewpub;

(6) The commissioner shall not issue a brewpub license if the brewpub premises are located in a county or municipality in which the sale of alcoholic beverages is prohibited; and

(7) A brewpub licensee shall:

(A) Pay all state and local license fees and excise taxes applicable to individuals licensed by this state as manufacturers, retailers, and, where applicable, wholesalers under this title;

(B) At the request of the commissioner, provide an irrevocable letter of credit or an Irrevocable Standby Financial Guarantee Bond in favor of the State of Georgia in an amount sufficient to guarantee such brewpub licensee's estimated tax liability for the first year of operation; and

(C) Measure beer manufactured on the premises and otherwise comply with applicable regulations respecting excise and enforcement tax determination of such beer as required by this title. (Code 1981, § 3-5-36, enacted by Ga. L. 1995, p. 734, § 3; Ga. L. 1997, p. 1514, § 1; Ga. L. 2012, p. 680, § 2/HB 472.)

**The 2012 amendment**, effective July 1, 2012, in subparagraph (2)(A), substituted "10,000 barrels" for "5,000 barrels" and deleted "and solely in draft form"

following "the premises" at the end; and substituted "5,000 barrels" for "500 barrels" in subparagraph (2)(C).

## ARTICLE 3

### LOCAL LICENSE REQUIREMENTS AND REGULATIONS FOR MANUFACTURE, DISTRIBUTION, AND SALE

#### **3-5-42. Requirement and issuance of municipal licenses generally; requirement by county of license for business licensed by municipality.**

#### RESEARCH REFERENCES

**Am. Jur. Pleading and Practice** Forms, Intoxicating Liquors, § 18.  
**Forms.** — 14C Am. Jur. Pleading and



CHAPTER 6

WINE

Article 1		Sec.	
General Provisions			sales; surety bond; excise taxes.
Sec.		3-6-21.2.	Sunday sales on farm wineries; off-site sales; sales in "special entertainment districts."
3-6-4.	Removal of partially consumed bottle of wine from premises.	3-6-21.3.	Sale by farm wineries of wines, distilled spirits, and malt beverages on or contiguous to its own premises.
Article 2		3-6-21.4.	Routes and signage for the Georgia Wine Highway.
State License Requirements and Regulations for Distribution and Sale		3-6-29.	Content requirements for wines manufactured by domestic and farm wineries; rules and regulations [Repealed].
3-6-20.	Levy and amount of tax; annual requirements.	3-6-31.	Special order shipping license requirements and regulations.
3-6-21.	Filing of bonds by applicants for licenses generally; waiver of bond requirement.		
3-6-21.1.	Licensing of farm wineries to engage in retail and wholesale		

ARTICLE 1

GENERAL PROVISIONS

3-6-4. Removal of partially consumed bottle of wine from premises.

Notwithstanding any other contrary provision of law, any restaurant which is licensed to sell alcoholic beverages for consumption on the premises may permit a patron to remove one unsealed bottle of wine per patron for consumption off premises, if the patron has purchased a meal and consumed a portion of the bottle of wine which has been purchased on the premises with such meal on the restaurant's premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine shall be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk. (Code 1981, § 3-6-4, enacted by Ga. L. 2008, p. 834, § 1/SB 55.)

**Effective date.** — This Code section became effective July 1, 2008.

**Cross references.** — Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area of motor vehicle, § 40-6-253.

OPINIONS OF THE ATTORNEY GENERAL

**Construction with other law.** — The enforcement provisions of O.C.G.A. § 40-6-253 remain in effect, including for bottles of wine resealed pursuant to O.C.G.A. § 3-6-4; the 2008 changes in the law were not intended to and did not authorize carrying open alcoholic beverage containers in the passenger area of vehicles. 2008 Op. Att’y Gen. No. 2008-7.

ARTICLE 2

STATE LICENSE REQUIREMENTS AND REGULATIONS FOR DISTRIBUTION AND SALE

3-6-20. Levy and amount of tax; annual requirements.

(a) An annual occupational license tax is imposed upon each winery, manufacturer, broker, importer, wholesaler, and retail dealer of wine in this state, as follows:

- (1) Upon each winery and manufacturer ..... \$ 1,000.00
- (2) Upon each wholesale dealer ..... 500.00
- (3) Upon each importer ..... 500.00
- (4) Upon each broker ..... 50.00
- (5) Upon each retail dealer ..... 50.00
- (6) Upon each special event use permit applicant ..... 50.00

(b) An annual occupational license tax shall be paid for each place of business operated. An application for the applicable license required pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated. (Code 1933, § 58-804, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2012, p. 827, § 6/HB 1066.)

**The 2012 amendment,** effective July 1, 2012, designated the existing provisions as subsection (a); added paragraph (a)(6); and added subsection (b).

3-6-21. Filing of bonds by applicants for licenses generally; waiver of bond requirement.

(a) All applicants for licenses other than retail licenses shall file with the commissioner, along with each initial application, a bond:

(1) Conditioned to pay all sums which may become due by the applicant to the state as taxes, license fees, or otherwise, arising out of the operation of the business for which licensure is sought; and

(2) Conditioned to pay all penalties which may be imposed upon the applicant for failure to comply with the laws and rules and regulations pertaining to wines.

The surety for the bonds shall be a surety company licensed to do business in this state, and the bonds shall be in such form as may be required by the commissioner and may be for a term of up to five calendar years.

(b) The bonds required pursuant to subsection (a) of this Code section shall be in the amount of \$5,000.00.

(c) All applicants for annual renewal of licenses other than retail licenses must file an annual bond or have a multiyear bond on file with the department that extends at least through the end of the calendar year for which renewal is sought. Such bonds must meet the same conditions as those filed with the initial application. (Code 1933, § 58-807, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5502, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 49; Ga. L. 2006, p. 206, § 10/HB 1248.)

**The 2006 amendment**, effective July 1, 2006, in subsection (a) substituted “licenses other than retail licenses” for “all licenses”, inserted “initial” near the beginning of the introductory language, and added “and may be for a term of up to five calendar years” at the end; in subsection (b), substituted “amount of \$5,000.00” for “following amounts.”, deleted paragraph (b)(1), which read “For wineries, \$5,000.00; and”, and deleted paragraph

(b)(2), which read “For retail dealers, \$500.00.”; substituted the present subsection (c) for former subsection (c), which read “The commissioner may waive the requirement of a surety on the bonds of applicants for retail licenses if he determines that a surety is not essential to the protection of the interests of the state.”

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2006, a period was added at the end of subsection (b).

### **3-6-21.1. Licensing of farm wineries to engage in retail and wholesale sales; surety bond; excise taxes.**

(a) As used in this Code section, the term:

(1) “Farm winery” means a winery which makes at least 40 percent of its annual production from agricultural produce grown in the state where the winery is located and:

(A) Is located on premises, a substantial portion of which is used for agricultural purposes, including the cultivation of grapes, berries, or fruits to be utilized in the manufacture or production of wine by the winery; or



(B) Is owned and operated by persons who are engaged in the production of a substantial portion of the agricultural produce used in its annual production.

For purposes of this paragraph, the commissioner shall determine what is a substantial portion of such winery premises or agricultural produce.

(2) "Georgia farm winery" means a farm winery which is licensed by the commissioner to manufacture wine in Georgia.

(3) "Tasting room" means an outlet for the promotion of a farm winery's wine by providing samples of such wine to the public and for the sale of such wine at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of wine can be given free of charge or for a fee.

(b) The commissioner may authorize any Georgia farm winery to offer wine samples and to make retail sales of its wine and the wine of any other Georgia farm winery in tasting rooms at the winery and at five additional locations in the state for consumption on the premises and in closed packages for consumption off the premises.

(c)(1) The commissioner may authorize any licensee which is a farm winery to sell up to 24,000 gallons per calendar year of its wine at wholesale within the state; provided, however, that the commissioner shall not authorize any licensed farm winery to sell its wine at wholesale unless such licensed farm winery shall have first offered its products for sale at a fair market wholesale price to a licensed Georgia wholesaler and such wholesaler does not accept the farm winery's product within 30 days of such offer.

(2) A farm winery licensee shall also be authorized to sell, deliver, or ship its wine in bulk or in bottles, whether labeled or unlabeled, in accordance with regulations of the commissioner, to Georgia farm winery licensees and shall be authorized to acquire and receive deliveries and shipments of such wine made by Georgia farm winery licensees.

(3) A Georgia farm winery licensee shall be authorized, in accordance with regulations of the commissioner, to acquire and receive deliveries and shipments of wine in bulk from out-of-state producers and shippers in an amount not to exceed 20 percent of its annual production, provided that the Georgia farm winery licensee receiving any such shipment or shipments files timely reports with the commissioner and keeps such records of the receipt of such shipment or shipments as may be required by the commissioner.

(4) Any wine received in bulk pursuant to paragraph(3) of this subsection shall have levied thereon the requisite taxes as prescribed

by Code Section 3-6-50, and such taxes shall be reported and remitted to the commissioner as provided in Code Section 3-2-6.

(d) The annual license tax for each license issued pursuant to this Code section shall be \$50.00.

(e) The surety bond required as a condition upon issuance of a license pursuant to this Code section shall be the same as that required pursuant to Code Section 3-6-21 with respect to wineries.

(f) Wines sold at retail by a manufacturer as provided in subsection (b) of this Code section shall have levied thereon an excise tax as prescribed by Code Section 3-6-50, and such tax shall be reported and remitted to the commissioner as provided in Code Section 3-2-6. (Code 1933, § 5A-5511, enacted by Ga. L. 1981, p. 1269, § 52; Ga. L. 1982, p. 1111, §§ 1, 3; Ga. L. 1983, p. 1116, § 1; Ga. L. 1984, p. 1142, § 1; Ga. L. 1985, p. 1403, § 1; Ga. L. 2001, p. 1026, § 1; Ga. L. 2008, p. 773, § 1/HB 393; Ga. L. 2009, p. 8, § 3/SB 46.)

**The 2001 amendment**, effective July 1, 2001, in paragraph (a)(2), substituted “by providing samples” for “by providing complimentary samples” and added “for consumption on the premises and for sale in closed packages for consumption off the premises” in the first sentence and added the second sentence; in subsection (b), inserted “and the wine of any other Georgia farm winery licensee” and substituted “and the wine of any other Georgia farm winery licensee at retail for consumption

on the premises and in closed packages for consumption off the premises” for “at retail”; and, in paragraph (d)(1), deleted the comma following “bulk”, inserted “or in bottles, whether labeled or unlabeled,” and inserted “such”.

**The 2008 amendment**, effective July 1, 2008, rewrote this Code section.

**The 2009 amendment**, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

### **3-6-21.2. Sunday sales on farm wineries; off-site sales; sales in “special entertainment districts.”**

Notwithstanding any other provisions of this title to the contrary, in all counties in which the sale of wine is lawful by a farm winery and in all municipalities in which the sale of wine is lawful by a farm winery, a farm winery which is licensed to sell its wine in a tasting room or other licensed farm winery facility within the county or municipality, as the case may be, for consumption on the premises or in closed packages for consumption off the premises shall be authorized to sell its wine and the wine of any other Georgia farm winery licensee on Sundays from 12:30 P.M. until 12:00 Midnight in the tasting room or other licensed farm winery facility, to the same extent as its county or municipal license would otherwise permit. Nothing in this Code section shall be construed so as to authorize a farm winery to sell wine as provided in this Code section on any other premises which are not actually located on the property where such farm wine is produced, except in special entertainment districts designated by the local governing authority of

the county or municipality, as applicable. (Code 1981, § 3-6-21.2, enacted by Ga. L. 1988, p. 222, § 1; Ga. L. 1991, p. 1164, § 1; Ga. L. 1997, p. 1514, § 1B; Ga. L. 2001, p. 1026, § 1.)

**The 2001 amendment**, effective July 1, 2001, inserted “and the wine of any other Georgia farm winery licensee” in the first sentence.

### 3-6-21.3. Sale by farm wineries of wines, distilled spirits, and malt beverages on or contiguous to its own premises.

(a) As used in this Code section, the term:

(1) “Affiliate” means any person controlling, controlled by, or under common control with a farm winery.

(2) “Farm winery” means a farm winery as defined in Code Section 3-6-21.1 that is located in Georgia.

(3) “Tasting room” has the meaning provided by Code Section 3-6-21.1.

(b)(1) Notwithstanding any other provision of this title to the contrary, in all counties or municipalities in which the sale of wine is lawful, the commissioner may authorize any farm winery licensee to sell its wine and the wine of any other farm winery licensee for consumption on the premises at facilities located on the premises of the winery or on property located contiguous to the winery and owned by the winery or by an affiliate of the winery.

(2) Notwithstanding any other provisions of this title to the contrary, in all counties or municipalities in which the sale of distilled spirits, malt beverages, and wines is lawful, the commissioner further may authorize such licensee to make sales of distilled spirits, malt beverages, and wines not produced by a farm winery for consumption in its tasting rooms and at facilities located on the premises of the winery or on property located contiguous to the winery and owned by the winery or by an affiliate of the winery, provided that any alcoholic beverages sold pursuant to this paragraph shall be purchased by the winery from a licensed wholesaler at wholesale prices. (Code 1981, § 3-6-21.3, enacted by Ga. L. 1997, p. 397, § 1; Ga. L. 2001, p. 1026, § 1; Ga. L. 2008, p. 773, § 2/HB 393.)

**The 2001 amendment**, effective July 1, 2001, in paragraph (b)(1), substituted “provision” for “provisions” and inserted “and the wine of any other Georgia farm winery licensee”.

**The 2008 amendment**, effective July 1, 2008, in paragraph (a)(1), substituted “a” for “the” near the end; in paragraph

(a)(2), substituted “that is located in Georgia” for “, as amended” at the end; added paragraph (a)(3); in paragraph (b)(1), deleted “Georgia” preceding “farm winery licensee”; and, in paragraph (b)(2), substituted “a farm winery” for “such licensee” and substituted “in its tasting rooms and” for “on the premises” near the middle.



**3-6-21.4. Routes and signage for the Georgia Wine Highway.**

The Department of Community Affairs and the Department of Transportation shall, with due consideration to the farm wineries in Georgia, collaborate to designate appropriate routes and signage for the Georgia Wine Highway. (Code 1981, § 3-6-21.4, enacted by Ga. L. 2001, p. 1026, § 1.)

**Effective date.** — This Code section became effective July 1, 2001.

**Cross references.** — Traffic signs, signals, and markings, T. 40, Ch. 6, A. 2.

**3-6-22. Requirement of license for shipment of wines into state; contents of application; accompanying documents and labels; approval of wholesalers and wholesalers' territories by commissioner.**

**Law reviews.** — For note and comment, "Dude, Where's My Wine? The Potential Effect of Granholm v. Heald on

Georgia Direct Wine Shipment Regulations," see 23 Ga. St. U. L. Rev. 631 (2007).

**JUDICIAL DECISIONS**

**Cited in** Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

**3-6-29. Content requirements for wines manufactured by domestic and farm wineries; rules and regulations.**

Reserved. Repealed by Ga. L. 2008, p. 773, § 3, effective July 1, 2008.

**Editor's notes.** — This Code section was based on Ga. L. 1985, p. 979, § 2; Ga. L. 1986, p. 10, § 3.

**3-6-30. Creation of limited exceptions.**

**Law reviews.** — For note and comment, "Dude, Where's My Wine? The Potential Effect of Granholm v. Heald on

Georgia Direct Wine Shipment Regulations," see 23 Ga. St. U. L. Rev. 631 (2007).

**3-6-31. Special order shipping license requirements and regulations.**

(a) For purposes of this Code section, the term "winery" means any maker or producer of wine whether in this state or in any other state, who holds a valid federal basic wine manufacturing permit.

(b) Notwithstanding any other provision of this title to the contrary, any shipper which is also a winery may be authorized to make direct shipments of wine to consumers in this state, without complying with

the provisions of Code Section 3-6-22, upon obtaining a special order shipping license from the commissioner pursuant to this Code section.

(c) A special order shipping license shall only be issued to a winery upon compliance with all applicable provisions of this title and the regulations promulgated pursuant to this title, and upon payment of the license fee designated for retail dealers in Code Section 3-6-20.

(d) A special order shipping license shall entitle the winery to ship wine upon order directly to consumers for personal or household use in this state without designating wholesalers as required by Code Section 3-6-22, provided that:

(1) The holder of a special order shipping license shall only ship brands of wine for which the holder has submitted labels to the commissioner;

(2) No holder of a special order shipping license shall be permitted to ship in excess of 12 standard cases of wine of one brand or a combination of brands into this state to any one consumer or address per calendar year;

(3) Before accepting an order from a consumer in this state, the holder of a special order shipping license shall require that the person placing the order state affirmatively that he or she is of the age required by Code Section 3-3-23 and shall verify the age of such person placing the order either by the physical examination of an approved government issued form of identification or by utilizing an Internet based age and identification service;

(4) A special order shipping license shall not authorize the shipment of any wine to any premises licensed to sell alcoholic beverages pursuant to this title; and

(5) Every shipment of wine by the holder of a special order shipping license shall be clearly marked "Alcoholic Beverages, Adult Signature Required," and the carrier delivering such shipment shall be responsible for obtaining the signature of an adult who is at least 21 years of age as a condition of delivery.

(e) The failure to comply strictly with the requirements of this Code section, Code Section 3-3-23, and all applicable provisions of this title and regulations promulgated pursuant to this title shall be grounds for the revocation of a special order shipping license or other disciplinary action by the commissioner. Upon revocation of a special order shipping license for shipment of wine to a person not of age as required by Code Section 3-3-23, such winery shall not be issued any special order shipping license pursuant to this Code section for a period of five years from the date of revocation.

(f) The holder of a special order shipping license shall collect all excise taxes imposed by Code Section 3-6-50, shall remit such taxes in

the same manner as licensed wine wholesalers, and shall accompany such remittance with such reports, documentation, and other information as may be required by the commissioner. In addition, an applicant for and a holder of a special order shipping license, as a condition of receiving and holding a valid license, shall:

(1) Agree to collect and to pay applicable Georgia state and local sales tax on each sale shipped to a consumer in Georgia;

(2) Accompany each remittance with such sales tax reports, documentation, and other information as may be required by the commissioner; and

(3) Consent to enforcement of the provisions of this Code section by the department and to the jurisdiction of the courts of Georgia for the collection of such taxes or other moneys owing, including interest and penalties.

(g) The commissioner may promulgate such rules and regulations as are necessary and appropriate for the enforcement of this Code section. (Code 1981, § 3-6-31, enacted by Ga. L. 2000, p. 1401, § 2; Ga. L. 2008, p. 376, § 1/HB 1061.)

**The 2008 amendment**, effective July 1, 2008, rewrote this Code section.

**Law reviews.** — For note and comment, “Dude, Where’s My Wine? The Po-

tential Effect of *Granholt v. Heald* on Georgia Direct Wine Shipment Regulations,” see 23 Ga. St. U. L. Rev. 631 (2007).

### 3-6-32. Shipment of wine by winery to consumers; circumstances.

**Law reviews.** — For note and comment, “Dude, Where’s My Wine? The Potential Effect of *Granholt v. Heald* on

Georgia Direct Wine Shipment Regulations,” see 23 Ga. St. U. L. Rev. 631 (2007).

## CHAPTER 7

### SALE OF DISTILLED SPIRITS BY PRIVATE CLUBS

#### ARTICLE 1

#### GENERAL PROVISIONS

#### 3-7-2. Applicability of chapter to private clubs.

#### OPINIONS OF THE ATTORNEY GENERAL

**Sale of alcohol by the drink.** — clubs conducting sales of alcoholic beverages by the drink where the sales are O.C.G.A. § 3-7-2 does not apply to private



authorized under a provision of law other than O.C.G.A. Ch. 7, T. 3. 2002 Op. Att’y Gen. No. U2002-4.

CHAPTER 8

SALE OF ALCOHOLIC BEVERAGES AT PUBLICLY OWNED FACILITIES

Sec.		Sec.	
3-8-2.	Sale of malt beverages, wine, and distilled spirits at public golf courses operated by counties or municipalities.		coliseums during professional sports events [Repealed].
3-8-5.	Sale of alcoholic beverages at	3-8-6.	Technical institutes; service of alcoholic beverages; regulation and tax.

3-8-1. Regulation and taxation of sale, storage, and distribution of alcoholic beverages at airports owned or operated by counties or municipalities.

JUDICIAL DECISIONS

**Entitlement to taxes between municipalities.** — Trial court granted an impermissible advisory opinion when the court granted a second city’s request for a declaratory judgment that the second city was authorized to impose and collect taxes on the sale, storage, and distribution of alcoholic beverages at an airport within that city’s limits because the second city failed to show that there was any justiciable controversy; the first city conceded that, under Georgia’s Alcoholic Beverages

Code, O.C.G.A. § 3-8-1(e), only the second city was authorized to impose and collect taxes on the sale, storage, and distribution of alcoholic beverages at the airport within the city’s limits and that the first city had to refund any alcoholic beverage taxes that the city received in error for the sale, storage, and distribution of alcohol in portions of the airport located within the corporate boundaries of the second city. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

3-8-2. Sale of malt beverages, wine, and distilled spirits at public golf courses operated by counties or municipalities.

The Department of Natural Resources or any county or municipality operating a public golf course and offering food or drink for retail sale as an incident to the operation of the golf course may sell at retail malt beverages, wine, and distilled spirits by the drink as an incident to the operation of the golf course upon obtaining a retail consumption license. (Ga. L. 1974, p. 587, § 1; Code 1933, § 5A-6502, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2011, p. 558, § 0.5/SB 121.)

**The 2011 amendment**, effective July 1, 2011, substituted “The Department of Natural Resources or any” for “Any” at the beginning, deleted “at its discretion” following “golf course may” and inserted “, wine, and distilled spirits” near the middle, and added “upon obtaining a retail consumption license” at the end.

### **3-8-5. Sale of alcoholic beverages at coliseums during professional sports events.**

Reserved. Repealed by Ga. L. 1997, p. 977, § 1, effective January 1, 2000.

**Editor’s notes.** — Ga. L. 2013, p. 141, § 3/HB 79, reserved the designation of this Code section, effective April 24, 2013.

### **3-8-6. Technical institutes; service of alcoholic beverages; regulation and tax.**

(a) As used in this Code section, the term “technical institute” means any facility which is operated by a unit of the Technical College System of Georgia and which has a business conference center capable of accommodating 200 people or more incident to its operation.

(b) Notwithstanding the provisions of Code Sections 3-3-21 and 3-3-21.1, a technical institute may serve alcoholic beverages incident to its operation of a business conference center.

(c) For purposes of regulating and taxing the sale, storage, and distribution of alcoholic beverages as provided in this Code section, a technical institute shall be considered to be within a municipality if the institute, or a greater part of the institute, is within the limits of the municipality. A technical institute shall be considered to be within the unincorporated area of a county if the institute, or a greater part of the institute, is located within the unincorporated area of the county. (Code 1981, § 3-8-6, enacted by Ga. L. 1999, p. 1225, § 3; Ga. L. 2008, p. 335, § 3/SB 435.)

**The 2008 amendment**, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” in subsection (a).

CHAPTER 9

SALE OF ALCOHOLIC BEVERAGES BY PASSENGER CARRIERS, NONPROFIT ORGANIZATIONS, AND HOTELS AND MOTELS

Article 1		Sec.	
Public Carriers; Nonprofit Organizations		3-9-4.	Nonprofit permit to sell alcoholic beverages; limitations.
Sec. 3-9-3.	Issuance of temporary permits for sale by nonprofit civic organizations of alcoholic beverages for consumption only on premises.	3-9-5.	Meaning of the term "bona fide nonprofit civic organization."
		3-9-6.	Limousine carrier furnishing alcoholic beverages.

JUDICIAL DECISIONS

**Cited** in Campbell v. State Rd. & Tollway Auth., 276 Ga. 714, 583 S.E.2d 32 (2003).

ARTICLE 1

PUBLIC CARRIERS; NONPROFIT ORGANIZATIONS

3-9-3. Issuance of temporary permits for sale by nonprofit civic organizations of alcoholic beverages for consumption only on premises.

(a) Upon the filing of an application and payment of a fee of \$25.00 by a bona fide nonprofit civic organization, the commissioner may issue a permit authorizing the organization to sell alcoholic beverages for consumption on the premises or to sell wine at retail for off-premises consumption, or both, for a period not to exceed three days, subject to any law regulating the time for selling such beverages.

(b) No more than six permits may be issued to an organization in any one calendar year pursuant to this Code section.

(c) Permits issued pursuant to this Code section shall be valid only for the place specified in the permit. No permit may be issued unless the sale of distilled spirits, wine, or malt beverages is lawful in the place for which the permit is issued. (Code 1933, § 5A-6303, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2008, p. 4, § 1/HB 1243.)



The 2008 amendment, effective March 29, 2008, in subsection (a), substituted “consumption on the premises or to sell wine at retail for off-premises consumption, or both,” for “consumption only on the premises” and substituted “three days” for “one day”; and, in subsection (b), substituted “six permits” for “one permit”.

### 3-9-4. Nonprofit permit to sell alcoholic beverages; limitations.

(a) Upon the filing of an application and payment of a fee of \$25.00 by a bona fide nonprofit civic organization, the commissioner may issue a special use temporary permit authorizing a bona fide nonprofit civic organization to auction wine in sealed containers only for a period not to exceed three days, subject to any law regulating the time for selling wine.

(b) No more than six special use temporary permits may be issued to a bona fide nonprofit civic organization in any calendar year.

(c) Special use temporary permits issued pursuant to this Code section shall be valid only for the location specified in the permit. No special use temporary permit may be issued unless local licensing authorities have issued to the bona fide nonprofit civic organization a permit or approval for the sale of wine at the location specified in the special use temporary permit. Prior to the commencement of the event described in the special use temporary permit, the bona fide nonprofit civic organization shall furnish to the commissioner a detailed inventory list of the wine to be auctioned including:

(1) The name, address, telephone number, and taxpayer identification number of the person who furnishes the wine for the event; and

(2) The type, brand, label, and quantity of each wine to be sold at auction.

(d) Bona fide nonprofit civic organizations which hold a special use temporary permit issued pursuant to this Code section may auction for off-premises consumption wine in sealed containers, which has been donated to the bona fide nonprofit civic organization by a person who does not currently hold a license that has been issued by the department pursuant to this title, wine which has been donated by a Georgia licensed retailer, or wine which has been donated or purchased from a Georgia licensed wine wholesaler. The bona fide nonprofit civic organization may ship or otherwise transport to the location specified in the special use temporary permit wine donated by a person who does not currently hold a license that has been issued by the department pursuant to this title or wine donated by a Georgia licensed retailer. Georgia excise tax shall be paid to the department on any donated wine. If the bona fide nonprofit civic organization cannot verify, within ten days of the conclusion of the permitted event, that Georgia excise tax for

the wine was previously paid to the department, the bona fide nonprofit civic organization shall pay to the department the appropriate excise tax as required by law. (Code 1981, § 3-9-4, enacted by Ga. L. 2008, p. 4, § 2/HB 1243.)

**Effective date.** — This Code section became effective March 29, 2008.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, Code

Section 3-9-4, as enacted by Ga. L. 2008, p. 536, § 1, was redesignated as Code Section 3-9-6.

### 3-9-5. Meaning of the term “bona fide nonprofit civic organization.”

As used in this article, the term “bona fide nonprofit civic organization” means an entity which is exempt from federal income tax pursuant to the provisions of subsection (c), (d), or (e) of 26 U.S.C. Section 501. (Code 1981, § 3-9-5, enacted by Ga. L. 2008, p. 4, § 2/HB 1243; Ga. L. 2009, p. 8, § 3/SB 46.)

**Effective date.** — This Code section became effective March 29, 2008.

**The 2009 amendment,** effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, substituted

“subsection (c), (d), or (e) of 26 U.S.C. Section 501” for “26 U.S.C. Sections 501(c), 501(d), or 501(e)” in this Code section.

### 3-9-6. Limousine carrier furnishing alcoholic beverages.

(a) Notwithstanding any provision contained in this title or any other law, the commissioner may issue an annual permit authorizing a limousine carrier to sell alcoholic beverages for consumption only in the vehicle supplied by the limousine carrier upon the filing of an application and payment of a fee of \$50.00 by such limousine carrier that holds a certificate issued in accordance with Article 3 of Chapter 7 of Title 46. In addition to the permit fee, the limousine carrier shall pay an annual fee of \$15.00 for each vehicle to be authorized for the sale of alcoholic beverages. The commissioner shall issue a sticker for each vehicle so authorized.

(b) A permit issued in accordance with this Code section shall not authorize the wholesale purchase of alcoholic beverages by a limousine carrier and only authorizes purchase from a retail dealer. A permit issued in accordance with this Code section shall be subject to any law regulating the time for selling such beverages.

(c) A permit issued in accordance with this Code section shall not authorize a limousine carrier to purchase or sell an alcoholic beverage in a location where the sale of such alcoholic beverage is unlawful.

(d) Limousine carriers holding permits issued in accordance with this Code section shall comply with the provisions of paragraph (1) of

subsection (a) of Code Section 3-3-23. (Code 1981, § 3-9-6, enacted by Ga. L. 2008, p. 536, § 1/SB 385.)

**Effective date.** — This Code section became effective July 1, 2008.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2008, Code Section 3-9-4, as enacted by Ga. L. 2008, p. 536, § 1, was redesignated as Code Section 3-9-6.

CHAPTER 13

SALE OF ALCOHOLIC BEVERAGES BY REGIONAL ECONOMIC ASSISTANCE PROJECT

Sec.		Sec.	
3-13-1.	Definitions.	3-13-4.	Powers, duties, and authority of commissioner.
3-13-2.	State license requirements to sell alcoholic beverages.		
3-13-3.	Local taxation of alcoholic beverage sales.		

**Effective date.** — This chapter became effective July 1, 2008.

3-13-1. Definitions.

As used in this chapter, the term:

- (1) “Alcoholic beverages for consumption on premises” shall mean malt beverages, wine, or distilled spirits by the drink for consumption on the premises only.
- (2) “Licensee” shall mean the developer, owner, or operator of the REAP or the developer, owner, or operator of or any certified project or facility located in a REAP to whom a state retail consumption dealer license is issued.
- (3) “Regional Economic Assistance Project” or “REAP” shall have the same meaning as in Code Section 50-8-190 and shall specifically include any certified project or facility located in a REAP. (Code 1981, § 3-13-1, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.)

3-13-2. State license requirements to sell alcoholic beverages.

(a) A REAP shall be authorized to sell alcoholic beverages for consumption on premises on days and at times authorized in any jurisdiction within this state for the sale of alcoholic beverages, upon



obtaining state license from the commissioner for the sale of alcoholic beverages.

(b) Prior to the issuance of a state license, the applicant shall obtain a license for the sale of alcoholic beverages from the local governing authority of any county or municipal corporation in which the REAP of developer, owner, or operator to be issued a state license is wholly or partially located; provided, however, that if said local governing authority is not authorized by ordinance or resolution to issue licenses for the sale of alcoholic beverages for consumption on premises, then no local license shall be required. If the local governing authority authorizes the issuance of licenses for the sale of alcoholic beverages for consumption on premises by resolution or ordinance after a state license has been issued or renewed, the licensee shall have 60 days after such an ordinance or resolution is passed to obtain the local license. If the applicant or licensee fails to obtain such local license, the applicant shall be denied a state license or the state license shall be subject to suspension or revocation by the commissioner.

(c) A state license issued pursuant to this chapter shall entitle the licensee the right to sell alcoholic beverages for consumption on premises on days and at times authorized in any jurisdiction within this state for the sale of alcoholic beverages, regardless of what local ordinance or regulations may be in effect in any jurisdiction in which the REAP is wholly or partially located. The sale of alcoholic beverages for consumption on premises by a licensee on days and at times authorized by subsection (a) of this Code section which differ from those days and times permitted under a licensee's local license shall not constitute lawful grounds for the denial, revocation, suspension, or nonrenewal of said local license by the local governing authority.

(d) A state license issued pursuant to this chapter shall entitle the licensee the right to sell alcoholic beverages for consumption on premises anywhere within the REAP. (Code 1981, § 3-13-2, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.)

### **3-13-3. Local taxation of alcoholic beverage sales.**

A local government shall be authorized to levy and collect any local taxes on any sale of alcoholic beverages made within its jurisdiction by a licensee as are otherwise authorized by law. (Code 1981, § 3-13-3, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.)

### **3-13-4. Powers, duties, and authority of commissioner.**

The commissioner may promulgate such reasonable rules and regulations as are necessary and appropriate to regulate the issuance of

state retail consumption dealer licenses to developers, owners, or operators of a REAP and the developers, owners, or operators of any certified project or facility located in a REAP and to enforce the provisions of this chapter. (Code 1981, § 3-13-4, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.)

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## CHAPTER 14

### SPECIAL EVENT USE PERMITS

Sec.  
3-14-1. Authority and requirements  
for special event use permits.

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**Effective date.** — This chapter became effective July 1, 2012.

#### **3-14-1. Authority and requirements for special event use permits.**

The commissioner may issue a special event use permit for the sale of alcoholic beverages for certain events which would otherwise require a retailer or retail dealers license. The commissioner shall specify by rule or regulation the events that shall qualify for a special event use permit; provided, however, that estate sales, the sale of inventory authorized under a bankruptcy proceeding, and activities that are similar in nature shall so qualify. Such permit shall not be valid for more than ten days. (Code 1981, § 3-14-1, enacted by Ga. L. 2012, p. 827, § 7/HB 1066.)









